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Murdered Indigenous Women and Girls

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Inuit Tapiriit Kanatami Position Paper

Implementing the
*UN Declaration on the Rights of
Indigenous Peoples in Canada*

About Inuit Tapiriit Kanatami

Inuit Tapiriit Kanatami (ITK) is the national representational organization for Canada's 60,000 Inuit, the majority of whom live in four regions of Canada's Arctic, specifically, the Inuvialuit Settlement Region (Northwest Territories), Nunavut, Nunavik (Northern Quebec), and Nunatsiavut (Northern Labrador). Collectively, these four regions make up Inuit Nunangat, our homeland in Canada. It includes 53 communities and encompasses roughly 35 percent of Canada's landmass and 50 percent of its coastline.

The comprehensive land claim agreements that have been settled in Inuit Nunangat continue to form a core component of our organization's mandate. These land claims have the status of protected treaties under section 35 of the *Constitution Act*, 1982, and we remain committed to working in partnership with the Crown toward their full implementation. Consistent with its founding purpose, ITK represents the rights and interests of Inuit at the national level through a democratic governance structure that represents all Inuit regions.

ITK advocates for policies, programs and services to address the social, cultural, political and environmental issues facing our people.

ITK is governed by a Board of Directors composed of the following members:

- Chair and CEO, Inuvialuit Regional Corporation
- President, Makivik Corporation
- President, Nunavut Tunngavik Incorporated
- President, Nunatsiavut Government

In addition to voting members, the following non-voting Permanent Participant Representatives also sit on the Board:

- President, Inuit Circumpolar Council Canada
- President, Pauktuutit Inuit Women of Canada
- President, National Inuit Youth Council

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Inuit Tapiriit Kanatami Position Paper

Implementing the *UN Declaration on the Rights of Indigenous Peoples* in Canada

"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.... Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights."

Prime Minister Justin Trudeau

Mandate Letter to Carolyn Bennett, Minister of Indigenous and Northern Affairs

November 2015

1. Introduction

This position paper outlines the expectations of Inuit Tapiriit Kanatami (ITK) regarding the Government of Canada's support for and commitment to implementing the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). Sections that follow provide an overview of the UNDRIP as well as a legal interpretation of its application to domestic law and policy. We describe Canada's current political position and the progress the federal government has made in fulfilling its commitment to implementing the UNDRIP as well as our preferred approach to implementation. This position paper also makes policy recommendations for moving forward with implementing and upholding the human rights of Indigenous peoples in Canada. We are confident that the positions outlined in this document provide a constructive basis for continued cooperation between Inuit and the Government of Canada on the advancement of reconciliation and human rights for Indigenous peoples.

On May 10, 2016, Carolyn Bennett, Minister of Indigenous and Northern Affairs Canada (INAC), announced in a speech to the United Nations (UN) Permanent Forum on Indigenous Issues in New York that Canada is "now a full supporter of the Declaration without qualification" and intends "nothing less than to adopt and implement the Declaration in accordance with the Canadian Constitution."¹ Despite her initial suggestion in the speech that Canada categorically changed its position, Minister Bennett went on to make statements about Canada's responsibilities under the UNDRIP that suggest little departure from the previous government's position.

Minister Bennett characterized s. 35 (Part II of the *Constitution Act*, 1982) as an existing "robust framework" for the protection of Indigenous rights and a "full box of rights for Indigenous peoples in Canada." She stated that Canada believes its existing constitutional obligations under s. 35 "serve to fulfill all of the principles of the [UN] Declaration, including free, prior and informed consent. These statements suggest that s. 35 is equivalent to and subsumes rather than complements the international human rights affirmed by the UNDRIP.

This is a problematic interpretation because existing domestic laws and policies, including Aboriginal and treaty rights, must cohere with international standards. The UNDRIP is also significant for Indigenous peoples because it affirms rights that may not be explicitly affirmed or clarified within existing treaty rights or emerging case law.

Minister Bennett also stated in her speech that modern treaties and self-government agreements are "the ultimate expression of free, prior and informed consent" among partners. This is not accurate. Agreements such as the James Bay and Northern Quebec Agreement (1975), Inuvialuit Final Agreement (1984), and Labrador Inuit Land Claims Agreement (2005) were negotiated by Inuit under significant pressure in an environment of impending resource development. The challenging circumstances under which some negotiations transpired are antithetical to the right to free, prior and informed consent and speak to the contemporary importance of implementing this important right.

With this position paper Inuit are calling upon Canada, as a UN Member State, to initiate actions that demonstrate the value and status of the UNDRIP as well as upholding its spirit and intent.

¹ Carolyn Bennett (Minister of Indigenous and Northern Affairs), "Speech delivered at the United Nations Permanent Forum on Indigenous Issues," May 10, 2016, New York, NY, accessed October 5, 2016, <http://news.gc.ca/web/article-en.do?nid=1064009>.

INAC indicated to ITK at the senior staff level prior to Canada's May 10 announcement that National Indigenous Organizations (NIOs) would be invited to participate in an *ad hoc* UNDRIP implementation committee that would help guide the implementation of this important international human rights instrument. It is concerning that, at the time of publication, this first step toward implementation has not materialized. Meanwhile, the Government of Canada has publically taken positions on the UNDRIP, without engaging Inuit, that potentially curtail discussions on implementation before they have even begun.²

The Prime Minister's mandate letters to cabinet ministers all describe the need for "a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership." Inuit are calling upon the Government of Canada to work in partnership with Inuit to ensure that we do in fact gain the recognition of rights, respect, co-operation, and partnership that is needed to advance reconciliation and create equity in our communities. It is only through comprehensive, substantive and procedural action that we will gain the recognition of our individual and collective human rights as Inuit and ultimately be able to exercise and enjoy them.

² James Munson, "Ottawa won't adopt UNDRIP directly into Canadian law: Wilson-Raybould," iPolitics, July 12, 2016, accessed October 13, 2016, <https://ipolitics.ca/2016/07/12/ottawa-wont-adopt-undrip-directly-into-canadian-law-wilson-raybould/>.

2. Background

The UNDRIP affirms the comprehensive human rights norms that Inuit and other Indigenous peoples have identified as minimum standards for the survival, dignity and well-being of our peoples. The UN General Assembly adopted the UNDRIP in September 2007 after 25 years of dialogue and negotiation between Indigenous peoples and Member States. Since 2007, the four States that voted against the UNDRIP have reversed their positions. Consensus on the UNDRIP was achieved when the last State – the United States – reversed its objection in December 2010 in favor of support. Other States have since endorsed the UNDRIP.³ More recently, in September 2014, the Outcome Document of a high level plenary meeting to be known as the World Conference of Indigenous Peoples reaffirmed this global consensus by States and the UN General Assembly. UN Member States, including Canada, reaffirmed their support for the UNDRIP and their commitments made in this respect.

The UNDRIP fills the gap that previously existed in the international human rights regime as an instrument that promotes and protects the distinct status and rights of Indigenous peoples. The adoption of the UNDRIP by the General Assembly curbed attempts by traditional international law to subsume Indigenous peoples and entrench a colonial view of Indigenous nations, peoples and communities. After 25 years of dialogue and negotiation between Indigenous peoples and Member States, the international community managed to finalize every article affirmed in the UNDRIP. This international human rights instrument now represents “a remarkable consensus among States as the most important actors on the global playing field that Indigenous persons and peoples are back not only as fully entitled holders of individual human rights, but as collective actors with distinct rights and status under international law.”⁴

Human rights experts associated with the UN recognized this gap in the human rights regime. Indigenous peoples worked to create political pressure to respond to the alarming and urgent human rights violations facing Inuit in the Arctic and Indigenous peoples elsewhere in the world. In this regard, it must be noted that Inuit representatives prioritized this work through the Inuit Circumpolar Council and participated directly, actively, and consistently in the important human rights standard-setting exercise from 1982 until the adoption of the UNDRIP in 2007. Inuit were motivated by the need to develop a human rights framework that safeguards our people and the integrity of our communities.

The rights affirmed in the UNDRIP are not “new” rights, but rather rights that have been recognized in domestic law in numerous countries across the globe and in international law. The outcome of the UNDRIP provides the distinct cultural context of Indigenous peoples, both as individuals and as collectivities with important economic, social, cultural, spiritual, and political rights that are responsive to our distinct status and rights as Indigenous peoples.

³ Colombia, Samoa and Ukraine had abstained in the 2007 vote in the General Assembly and subsequently endorsed the UNDRIP.

⁴ International Law Association, Committee on Rights of Indigenous Peoples, The Hague Report, accessed September 22, 2016, <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>.

The preamble to the UNDRIP invokes the UN Charter, signed by Canada on June 26, 1945, and reiterates the need for its Member States to act in "good faith in the fulfilment of the obligations assumed by States in accordance with the Charter." The preamble further recognizes the "urgent need to respect and promote the inherent rights of indigenous peoples" and that such recognition "will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith." The UNDRIP is a key measure for State compliance by treaty bodies, special rapporteurs, and other independent experts.

ITK understood the Prime Minister to have been aware of the historical and current UN Member State aggression towards Indigenous peoples across the globe and that such knowledge propelled his desire to renew the relationship between the Government of Canada and Inuit, Métis and First Nations. The Prime Minister's campaign promises coupled with his mandate letters to cabinet ministers also signal a desire to forge a new relationship based on the full adoption of the UNDRIP without qualification and, more importantly, a commitment to its implementation.

Inuit face severe social inequities and injustices that mirror those found in impoverished, developing countries. We also face increasing pressure by larger, more powerful forces acting within Inuit settlement areas that may jeopardize our traditional resources and economies as well as our cultural survival and integrity.

3. UNDRIP Legal Status

The UNDRIP has gained universal consensus as a pivotal international human rights instrument specifically related to Indigenous peoples. International legal scholars, human rights experts and the courts have all affirmatively recognized the central role that international human rights law should play in upholding the rights of all peoples, including Indigenous peoples. There is an interactive dynamic between international human rights obligations and domestic law.

James Anaya, the former UN Special Rapporteur on the Rights of Indigenous Peoples, emphasizes that “even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal commitments that are related to the UN Charter, other treaty commitments and customary international law.”⁵ In addition, he emphasizes that the rights affirmed by the UNDRIP “constitute or add to the normative frameworks for the activities of United Nations human rights institutions, mechanisms and specialized agencies as they relate to indigenous peoples.”⁶

Consistent with the interpretation of the International Law Association Committee on the Rights of Indigenous Peoples (ILA Committee), the UNDRIP “is deserving of utmost respect” and its preamble clearly “implies that respect of the UNDRIP represents an essential prerequisite in order for States to comply with some of the obligations provided for by the UN Charter.”⁷

Furthermore, the UN Expert Mechanism on the Rights of Indigenous Peoples⁸ and the Permanent Forum on Indigenous Issues have emphasized that the UNDRIP is a “principled framework for justice, reconciliation, healing and peace.”⁹

⁵ UN Document A/65/264, para. 62.

⁶ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, UN Doc. A/HRC/9/9 of 11 August 2008, paras. 85 and 88.

⁷ International Law Association, *supra* note 15 at 5.

⁸ Expert Mechanism Advice No. 6 (2014): Restorative justice, Indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities, Annex to UN Document A/HRC/27/65 at p. 21: The United Nations Declaration on the Rights of Indigenous Peoples constitutes a principled framework for justice, reconciliation, healing and peace. It affirms that the United Nations, its bodies and specialized agencies, and States have a duty to promote respect for and full application of the provisions of the Declaration and follow up on its effectiveness. Full implementation of the Declaration necessarily entails the protection and promotion of Indigenous peoples’ right to access to justice and to effective remedies.

⁹ Economic and Social Council Official Records, 2015, Supplement No. 23 E/2015/43-E/C.19/2015/10, Permanent Forum on Indigenous Issues, Report on the fourteenth session (20 April–1 May 2015), Recommendation 33. The Permanent Forum reminds States that the implementation of the United Nations Declaration provides a common framework for reconciliation, justice, healing and peace. Each State has a prime responsibility and duty to protect, promote and implement all human rights, consistent with the Charter of the United Nations and international human rights law. Furthermore, all forms of discrimination must be avoided.

In regard to clarifying the legal status of declarations, the UN Office of Legal Affairs has affirmed that “in United Nations practice, a ‘declaration’ is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected.”¹⁰ Furthermore, legal scholar James Crawford has underlined this practice as follows

[E]ven when resolutions are framed as general principles, they can provide a basis for the progressive development of the law and, if substantially unanimous, for the speedy consolidation of customary rules. Examples of important “law-making” resolutions include ... the United Nations Declaration on the Rights of Indigenous Peoples.¹¹

In *Reference re Public Service Employee Relations Act (Alberta)*, former Chief Justice Brian Dickson underlined the fertility of international human rights law in relation to domestic law and policy, stating that the “various sources of international human rights law – declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms – must, in my opinion, be relevant and persuasive sources for interpretation of the Charter’s provisions.”¹²

The Human Rights Council, in the context of its Universal Periodic Review, announced that “besides treaties the various countries are parties to, the *Universal Declaration of Human Rights*” would be used for purposes of evaluation of Member State compliance with their human rights obligations under the 1948 *Universal Declaration of Human Rights*.

It is highly significant that both the International Law Association and the former UN Special Rapporteur on the Rights of Indigenous Peoples also acknowledge that key provisions of the UNDRIP are of a customary international law nature and as such, create legally binding obligations of States.¹³ In this regard, it is understood that:

¹⁰ The Office of Legal Affairs of the United Nations, at the request of the then Commission on Human Rights sought clarification on this question in 1962 in relation to the 1948 Universal Declaration of Human Rights and affirmed that “in United Nations practice, a ‘declaration’ is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected.” See UN Document E/3616/Rev.1, para. 105.

¹¹ James Crawford, *Brownlie’s Principles of Public International Law*, 8th ed. (Oxford, Oxford University Press, 2012), p. 42.

¹² *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313, at 348 (Dickson C.J. dissenting). This passage cited with approval by the Supreme Court of Canada in *United States of America v. Burns*, [2001] 1 S.C.R. 283, para. 80.

¹³ UN Doc. A/65/264 (9 August 2010), General Assembly, Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, para 62: “Furthermore, even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal commitments that are related to the Charter, other treaty commitments and customary international law. The Declaration builds upon the general human rights obligations of States under the Charter and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity that are incorporated into widely ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to be generally accepted within international and State practice, and hence to that extent the Declaration reflects customary international law.” See also “The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment”, S. James Anaya of Rogers College of Law, University of Arizona, and Siegfried Wiessner of St. Thomas University School of Law, JURIST, University of Pittsburgh School of Law, October 3, 2007, accessed October 8, 2016, <http://www.jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php>.

In customary international law, *opinio juris* is the second element (along with state practice) necessary to establish a legally binding custom. *Opinio juris* denotes a subjective obligation, a sense on behalf of a state that it is bound to the law in question.¹⁴

Furthermore, Article 38 (1) (b) of the *Statute of the International Court of Justice* includes “custom” as a source of international law:

Article 38 (1) The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b) international custom, as evidence of a general practice accepted as law

Many provisions of the UNDRIP were included because Indigenous peoples effectively demonstrated that they reflected acts and behavior of state practice and *opinio juris*. One of the most compelling examples was state recognition of the collective or group nature of Indigenous rights, especially with regard to lands, territories and resources.

There are diverse provisions in the UNDRIP that reflect State obligations in both conventional and customary international law. Again, according to the ILA Committee and its expert commentary on the UNDRIP, “the relevant areas of indigenous peoples’ rights with respect to which the discourse on customary international law arises are self-determination; autonomy or self-government; cultural rights and identity; land rights as well as reparation, redress and remedies.”¹⁵ However, like the inter-related, interdependent, indivisible and interconnected nature of human rights, the ILA Committee recognized that “it would be inappropriate to deal with these areas separately.... The rights just listed are all strictly interrelated ... to the extent that the change of one of its elements affects the whole.”¹⁶

¹⁴ UNHCR, accessed September 22, 2016, <http://www.refworld.org/docid/3deb4b9c0.html>.

¹⁵ International Law Association, The Hague Conference (2010), Interim Report of the Committee on Rights of Indigenous Peoples, p. 43, accessed October 13, 2016, <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>.

¹⁶ Ibid.

4. UNDRIP and Domestic Law and Policy

Consistent with the status of the UNDRIP, the nature of international human rights law, and the commitments of Canada's current government, it is clear that the UNDRIP is an important international human rights instrument that Canada has a legal and moral imperative to integrate into Canadian domestic law and policy that must inform executive, legislative and judicial actions relating specifically to Indigenous peoples.

This position is informed by the universal nature of human rights as well as the minimum standards affirmed within the UNDRIP. More significantly, it is shaped by well-established rulings of the Supreme Court of Canada that domestic law and policy can be influenced by international law and in particular, international human rights law.

The UN Special Rapporteur on the Rights of Indigenous Peoples has sought to clarify the legal status of the UNDRIP in relation to domestic law and policy:

The Declaration builds upon the general human rights obligations of States under the UN Charter and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity that are incorporated into widely ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to be generally accepted within international and State practice, and hence to that extent the Declaration reflects customary international law.¹⁷

In *Baker v. Canada*, the SCC affirmed this principle, ruling that international human rights law is "a critical influence on the interpretation of the scope of the rights included in the Charter." The SCC further stated that "the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review."¹⁸

Furthermore, the courts have stated that declarations and other international human rights law are not simply used to interpret the *Canadian Charter of Rights and Freedoms*, but also human rights statutory law. Here the Canadian courts have readily relied upon international human rights law in interpreting human rights in the *Charter* (Part I of the *Constitution Act*, 1982). Thus, there should not be a lesser standard applied in relation to Indigenous peoples' human rights in s. 35 (Part II of the *Constitution Act*, 1982).

¹⁷ General Assembly, Situation of human rights and fundamental freedoms of indigenous people; Note by the Secretary-General, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/65/264 (9 August 2010), para. 82.

¹⁸ *Baker v Canada*, [1999] 2 SCR 817. see *Baker v. Canada* (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39 (QL) at paras. 69-71, accessed October 2, 2016, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1717/index.do>. For more detail see Anne F. Bayefsky, "International Human Rights in Canadian Courts," in Benedetto Conforti; Francesco Francioni eds., *Enforcing International Human Rights in Domestic Courts* (Leiden, Netherlands: Martinus Nijhoff Publishers, 1997), 295.

As the SCC ruled in *Tsilhqot'in Nation*, para. 142:

The guarantee of Aboriginal rights in s. 35 of the *Constitution Act*, 1982, like the *Canadian Charter of Rights and Freedoms*, operates as a limit on federal and provincial legislative powers. The *Charter* forms Part I of the *Constitution Act*, 1982, and the guarantee of Aboriginal rights forms Part II. Parts I and II are sister provisions, both operating to limit governmental powers, whether federal or provincial.¹⁹

Another example is the *First Nations Child and Family Caring Society of Canada v. Canada (Attorney General)*, where Canada's Federal Court ruled that "International instruments such as the UNDRIP and the *UN Convention on the Rights of the Child* may also inform the contextual approach to statutory interpretation." In its own factum to the Court, Canada indicated that the *UN Declaration* "may provide legal context that is of assistance in interpreting domestic legislation".²⁰

And, in 2007, the SCC in *R v. Hape LeBel J* affirmed that:

First, the legislature is presumed to act in compliance with Canada's obligations as a signatory of international treaties and as a member of the international community. In deciding between possible interpretations, courts will avoid a construction that would place Canada in breach of those obligations. The second aspect is that the legislature is presumed to comply with the values and principles of customary and conventional international law...²¹

This Court has also looked to international law to assist it in interpreting the *Charter*. Whenever possible, it has sought to ensure consistency between its interpretation of the *Charter*, on the one hand, and Canada's international obligations and the relevant principles of international law, on the other.²²

Such rulings should leave no doubt about the fact that the SCC has affirmed the positive interaction between international human rights law and its use in informing the meaning and substance of the *Constitution* and the *Charter*.

¹⁹ *Tsilhqot'in Nation*, para. 142.

²⁰ *First Nations Child and Family Caring Society of Canada v. Canada (Attorney General)*, 2012 FC 445, para. 353.

²¹ *R v Hape LeBel J*, [2007] 2 SCR 314.

²² *Ibid*, 324.

5. Canada's Current Position on the UNDRIP

The UN Special Rapporteur on the Rights of Indigenous Peoples described the human rights problems faced by Indigenous people in Canada as having reached "crisis proportions" in his 2014 report. He advises the Government of Canada that the UNDRIP "provides a common framework within which the issues faced by indigenous peoples in the country can be addressed."²³

Prime Minister Trudeau's mandate letter to Minister Carolyn Bennett states his expectation that she prioritize implementing the 94 Calls to Action of the Truth and Reconciliation Commission of Canada (TRC), starting with the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* through established legislative, regulatory, and Cabinet processes. The TRC Calls to Action invoke the UNDRIP in no less than 16 of 94 Calls. The most significant are reflected in Calls 43 and 44 under the heading of reconciliation:

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.²⁴

Canada's position to date on implementing the UNDRIP can be characterized as inaction. It has been over one year since the Liberal government promised to renew Canada's relationship with Indigenous peoples. In her speech announcing Canada's endorsement of the UNDRIP during the May 2016 meeting of the UN Permanent Forum on Indigenous Issues, Minister Bennett stated that its adoption and implementation would be carried out "in full partnership with First Nations, the Métis Nation and Inuit Peoples."

²³ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, UN Doc. A/HRC/9/9 of 11 August 2008, paras. 85 and 88.

²⁴ Truth and Reconciliation Commission of Canada, Truth and Reconciliation Commission of Canada: Calls to Action (Winnipeg, MN: 2015), 4, accessed October 13, 2016, http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf.

The only other actions taken publicly by Canada on this file include remarks made by the Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould, to the Assembly of First Nations Annual General Assembly in July 2016. In the context of the notion of immediately enshrining the whole of the UNDRIP in law, which Indigenous peoples have not insisted upon, the Minister stated that such an action was “unworkable” and provided an interpretation of UNDRIP’s provisions regarding the right of Indigenous peoples to FPIC that is concerning.²⁵

The Minister characterizes Indigenous peoples’ fundamental right to FPIC as a “concept” in her July 2016 letter to Grand Chief Matthew Coon Come of the Grand Council of the Crees (Appendix I) rather than as a positive human right of Inuit, Métis and First Nations that must be incorporated into the laws, policies, and procedures of the federal government. Though the Minister’s letter makes a useful reference to “meaningful and systemic change,” this commitment needs to be reinforced and must be understood within a substantive human rights framework and not merely on the rhetoric that the federal government will “respect and acknowledge the place of Indigenous nations in a modern Canada.”

The Minister’s letter further indicates the need for “careful consideration,” but does not in any way suggest that a comprehensive dialogue must start with Indigenous peoples as the primary actors and rights holders, especially in relation to the right to FPIC. The ambiguous linkage between “the provinces and territories, and other stakeholders” and our right to FPIC is a disturbing formulation. Rather, the mandate letter to Minister Bennett emphasizes the UNDRIP, the TRC and international human rights obligations specifically concerning Indigenous peoples. Therefore, the dialogue must be between Indigenous peoples as rights holders and the Government of Canada as the state responsible for upholding human rights.

Federal law and policy, developed in collaboration with Inuit, Métis and First Nations, must be established on the basis of the right to FPIC as well as its dynamic interrelationship with all other rights affirmed in the UNDRIP. FPIC should be operationalized after careful consideration of the procedural aspects of this right and through any guidance from the Court. The provinces, territories and other stakeholders must adhere to the rights affirmed in the UNDRIP thereafter. Implementation will pivot on the key ways and means by which Indigenous peoples have been able to articulate and give voice to all of the content of the rights affirmed by the UNDRIP.

²⁵ Address to the Assembly of First Nations Annual General Assembly, July 12, 2016, Minister of Justice and Attorney General of Canada, Jody Wilson-Raybould, suggested that “simplistic approaches, such as adopting the UNDRIP as being Canadian law are unworkable.” The UNDRIP as a whole was demeaned publicly in the media as “unworkable,” even if that was not the intent. See Matthew Coon Come, “Reconciliation requires repudiation of an unjust past,” *The Nation*, August 4, 2016, accessed September 23, 2016, <http://www.nationnews.ca/reconciliation-requires-repudiation-unjust-past/>.

The UNDRIP affirms rights that have profound implications for Inuit and our communities that may not be explicitly affirmed within land claims agreements, s. 35, or existing case law. Article 14 of the UNDRIP, for example, affirms the right of Indigenous peoples to “establish and control their educational systems and institutions providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning.”

Article 23 affirms the right of Indigenous peoples “to determine and develop priorities and strategies for exercising their right to ... be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

Inuit have invoked these rights in order to strengthen our assertion of rights that have in some cases not been explicitly affirmed or clarified within existing land claims agreements and as a consequence may not be subsumed within s. 35.²⁶ These challenges speak to the need for a procedural mechanism that Inuit can utilize to enforce our human rights.

Finally, the commitments made by Prime Minister Trudeau and the mandate letter to Minister Bennett must result in more than “practical and meaningful benefits on the ground.” The burden is upon the federal government to effectively engage Inuit, Métis and First Nations to achieve an ongoing, long-term partnership within the framework of the spirit and intent of the UNDRIP. In this way, all actors, in lock step, can begin hastening the transition toward recognition of rights, respect, co-operation, and partnership. Through such a relationship and dialogue, collectively we can begin the comprehensive harmonization of Canadian laws consistent with the spirit and intent of the UNDRIP and the rights affirmed therein as well as with other international human rights instruments.

²⁶ Nunavut Tunngavik Inc., *Our Primary Concern: Inuit Language in Nunavut* (2009/2010 Annual Report on the State of Inuit Culture and Society) (Iqaluit, NU: October 2011), 48, accessed October 9, 2016, <http://www.tunngavik.com/files/2011/10/2009-10-sics-annual-report-eng1.pdf/>.

6. Implementing the UNDRIP

Inuit insist that an adequately resourced, comprehensive federal legislative framework, drafted in collaboration with Indigenous peoples, is necessary to begin the process of implementing the UNDRIP. We do not accept the notion that an article-by-article approach by diverse departments and agencies will accomplish full implementation of the interrelated, interdependent and indivisible human rights affirmed in the UNDRIP. Furthermore, in light of the history of residential schools, widespread discrimination, land and resource dispossession, and related ongoing adverse impacts, it is crucial to implement the UNDRIP through a comprehensive framework and, again, not simply through separate, dispersed, and uncoordinated actions.

At this stage, greater emphasis must be placed on the need for concrete procedural mechanisms or a clearly defined apparatus to engender a relationship between the NIOs and the Government of Canada. We note that other human rights instruments are being implemented in a coherent and coordinated fashion, thereby ensuring that the Government of Canada's commitments are being fulfilled. Specifically, we note that the obligations of the federal government under the *UN Convention on the Rights of the Child* have been carefully considered and currently include national as well as provincial and territorial level persons responsible for its implementation and compliance, including the Canadian Council of Child & Youth Advocates (CCYA).

Child and youth advocates in each province and territory have been effective in encouraging the fullest possible implementation of the *UN Convention on the Rights of the Child*. For example, British Columbia's Representative for Children and Youth published a report in October 2016 highlighting the alarming number of children and youth in the care of the provincial government that have experienced sexual violence, including a disproportionately high number of Indigenous children and youth.²⁷ The report has spurred a commitment for action by the Minister of Indigenous and Northern Affairs to work with provincial and territorial social services ministers on "overhauling the system."²⁸

In regard to monitoring and compliance, these matters can and should be explored throughout comprehensive, inclusive negotiations and may depend on the subject matter, the range of actors and departments or agencies involved. However, national monitoring should be similar to that of the respective treaty body requirements that the Government of Canada must comply with to meet their solemn obligations under international human rights law. Ultimately, the questions relate to and must be calibrated to the substance of the human rights affirmed in the UNDRIP and whether or not they are genuinely being exercised and enjoyed by the Inuit of Canada – the beneficiaries of these distinct human rights.

²⁷ Representative for Children and Youth, *Too many victims: Sexualized violence in the lives of children and youth in care* (October 2016), accessed October 10, 2016, https://www.rcybc.ca/sites/default/files/documents/pdf/reports_publications/rcy_toomanyvictimsfinal.pdf.

²⁸ Kathryn Blaze Baum, Mark Hume and Gloria Galloway, "B.C. report finds Indigenous girls in care more likely to face sex abuse," *The Globe and Mail*, October 4, 2016, accessed October 9, 2016, <http://www.theglobeandmail.com/news/british-columbia/damning-bc-report-finds-indigenous-girls-in-care-more-likely-to-face-sex-abuse/article32230796/>.

7. Conclusions and Recommendations

The substance of the UNDRIP after over 25 years of negotiation still exists to this day. The procedural elements of building a relationship, however, do not exist. Inuit remain committed to cooperation and partnership in the fulfillment of the Prime Minister's commitments and the legal and moral imperatives reflected in the mandate letter to Minister Bennett to achieve the ends of the UNDRIP. Therefore, we offer the following recommendations with the objective of encouraging concrete action by governments:

1. Develop national legislation, in partnership with Inuit, that puts the principles of recognition of rights, respect, cooperation and partnership into action through a comprehensive legislative framework for adoption and implementation of the UNDRIP at the federal, provincial and territorial levels.
2. Work in partnership with Inuit through a Memorandum of Understanding on the development of a clearly defined apparatus through which to implement the UNDRIP at the provincial and territorial levels.
3. Reject colonialism in favor of a contemporary human-rights-based approach based on principles of justice, democracy, respect for human rights, equity, non-discrimination, good governance, and good faith. The federal government can start by upholding and implementing through dialogue the right of Inuit to FPIC in accordance with its UNDRIP and international human rights obligations.
4. Consistent with the TRC's Calls to Action, adopt and implement the UNDRIP as the framework for reconciliation on the basis of the procedures outlined by Indigenous peoples and the federal government.

8. Appendix I

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

The Honourable / L'honorable Jody Wilson-Raybould, P.C., Q.C., M.P. / c.p., c.r., députée
Ottawa, Canada K1A 0H8

RECEIVED JUL 29 2016
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JUL 25 2016

Grand Chief Matthew Coon Come
Grand Council of the Crees (Eyou Istchee)
Cree Nation Government
2 Lakeshore Road
Nemaska QC J0Y 3B0

Dear Grand Chief Coon Come and Co-signatories:

The Office of the Prime Minister has forwarded to me a copy of your correspondence concerning the implementation of the United Nations Declaration on the Rights of Indigenous Peoples and the need for free, prior, and informed consent in the laws, policies, and procedures of the federal government. I regret the delay in responding.

Your correspondence raises many important concerns that will require careful consideration and discussion as the Government of Canada engages with Indigenous peoples, the provinces and territories, and other stakeholders on the implementation of the Declaration. While I cannot anticipate the outcome of this engagement, I believe that the time is right for meaningful and systemic change in order to respect and acknowledge the place of Indigenous nations in a modern Canada.

The Declaration recognizes that Indigenous peoples have both individual and collective rights. In many respects, these rights echo those recognized and protected by section 35 of the *Canadian Charter of Rights and Freedoms* and the vision of reconciliation held by the Supreme Court of Canada. Indigenous participation in decision making is at the heart of the Declaration's concept of free, prior, and informed consent. Indigenous peoples everywhere must be able to participate and have a meaningful voice in decisions that affect their lives.

Moving forward, the challenge will be to translate these hard-fought rights into practical and meaningful benefits on the ground. To this end, much work will be needed by both Indigenous peoples and public governments. The Government of Canada is committed to supporting and hastening this transition.

Canada

We believe that meaningful engagement and dialogue is critical to furthering reconciliation. As such, we have committed to reviewing Canada's environmental assessment processes to enhance the role of Indigenous peoples in reviewing and monitoring major resource development projects. I have taken note of your views and look forward to working closely with my colleagues, a number of whom I have taken the liberty of sending a copy of this letter, and in partnership with Indigenous organizations in moving forward on these commitments.

I appreciate having had your comments brought to my attention.

Respectfully,



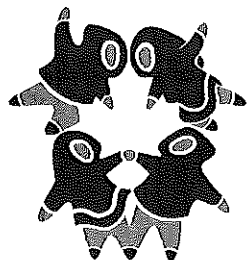
The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada

c.c.: The Honourable Carolyn Bennett, P.C., M.P.
Minister of Indigenous and Northern Affairs



The Honourable Jim Carr, P.C., M.P.
Minister of Natural Resources

The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change


The Honourable Dominic LeBlanc, P.C., M.P.
Leader of the Government in the House of Commons and
Minister of Fisheries, Oceans and the Canadian Coast Guard



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