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The United Nations Committee on the Elimination of Racial Discrimination (CERD)
CERD Secretariat and Respected Expert Members
Via email and hand delivered

Re: The Report of the government of Canada to the Committee on the Elimination of Racial Discrimination, concerning Canada's 17th and 18th Periodic Reports to the CERD (CERD/C/CAN/18) to be considered at its 70th session, 19 February – 9 March, 2007.

Respectful Greetings,

The International Indian Treaty Council (IITC) is an Indigenous Non- Governmental Organization with Consultative Status to the UN Economic and Social Council since 1977. IITC's affiliates are Indigenous Peoples, Nations, organizations and communities from North, Central, South America and the Pacific, and include Indigenous First Nations of Canada.

The IITC recalls with appreciation the CERD's General Recommendation XXIII on the Rights of Indigenous Peoples (1997) as well as the CERD Committee's own practices, calling upon "the States parties with Indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention." (Recommendations adopted by the Committee on the Elimination of Racial Discrimination, CERD/C/365 11 February 1999, para. 6).

IITC therefore respectfully submits our concerns for the consideration of the CERD Committee in regard to the report submitted by the government of Canada for review at its 70th session. We are in particular very concerned that Canada's failure to implement CERD General Recommendation XXIII with regards to free prior informed consent in its actions and relations with Indigenous Peoples has resulted in dire consequences and impacts for the rights and survival of Indigenous Peoples, both in and outside of Canada.

In this regard we greatly appreciate your attention to the following urgent matters, as follows:

1. We wholeheartedly concur with the statements submitted by Indigenous organizations and First Nations of Canada to this body. We strongly support their requests that CERD investigate the various cases and examples they present of racism and racial discrimination towards the Indigenous Peoples whose traditional homelands are considered to be located within that county.

As their submissions highlight, the report of the government of Canada is sadly lacking in its assessment of the solutions that it has purportedly undertaken to correct situations of racial

discrimination in response to questions raised by the CERD. Canada's report most notably fails to address the underlying causes of these situations as well as the systematic discrimination that continues to persist in the experiences of the Indigenous Peoples.

As the Committee will note, particularly urgent concerns expressed by the First Nations Peoples of Canada include ongoing institutional racism and discrimination within the criminal justice and court systems, Treaty violations, a range of inequities in social services and living conditions, lack of protection against violence in particular towards Indigenous women, youth and children (including high levels of deaths of Indigenous children in state-managed foster care) and the imposition of development projects impacting Indigenous Peoples' lands, waters and traditional means of subsistence undertaken without their free prior and informed consent.

Ronald Lameman, Beaver Lake Cree Nation, is the current Interim Director of the Confederacy of Treaty 6 First Nations, representing 18 First Nations in Alberta Canada. The Confederacy, based in Edmonton, Alberta Canada, is an affiliate of the IITC. Mr. Lameman provided the following statement addressing the particular concerns of the Confederacy of Treaty 6 First Nations Peoples, and requested that it be submitted to the CERD Committee by IITC:

“The Nations and Peoples of Treaty No. 6 continue to have respect for and hold Sacred the true spirit and intent of Treaty No. 6. However, the government of Canada along with the provincial governments of this country continue to steamroll ahead with their modern version of Manifest Destiny by instituting discriminatory legislation, policies and regulations that violate the Treaty and collective rights of the Indigenous Nations of Treaty No. 6 territory.

Our peoples continue to suffer disproportionate rates of incarceration, children in foster care, youth suicides, health problems, substandard housing, contaminated water and a range of other conditions. I don't think the CERD experts have been informed by the Government that at least one out of every 18 First Nation children is in child care custody today in this County. And there have been many cases of deaths of our young Native children and babies in foster care custody that have never been fully investigated or examined.

Transnational and Multinational Corporations, many of them based in Canada, continue to be unchecked in their raping and pillaging of Mother Earth and our homeland. Today, to give just one example, First Nations elders and leaders from the Northwest Territories who live downstream from the open pit “tar sands” mining sites have spoken out, calling for a moratorium of the extraction of “tar sands”. Tar sands extraction has had and continues to have a massive destructive environmental impact which I have recently seen with my own eyes. Vast areas of traditional subsistence hunting and fishing territories have been desecrated, contaminated and destroyed, and more are being threatened. Treaty Six supports the call made earlier this year by Grand Chief Herb Norwegian of the Dehcho First Nation, for a moratorium on tar sands extraction. This call needs to be upheld and enforced by the Canadian government until the long term impacts can be fully understood and rights of the Indigenous Peoples, including their free prior informed consent and right to subsistence can be guaranteed.

The Canadian government does nothing to uphold its obligation to enforce and protect our rights under Treaty No 6, starting with the requirement to obtain our free prior informed consent. Instead, the government of Canada gives a free rein to these corporations to extract, exploit and destroy our mineral resources, our forests, mountains, water ways, our fish and game, and the other natural resources we require to maintain our cultural practices, survival and subsistence way of life. They do this in violation of the solemn agreements and mutual understandings that were entered into by the ancestors of both parties to Sacred Treaty No. 6 and also the rights and obligations affirmed in international agreements they have entered into, including the CERD.

All this has resulted in a crisis situation for us. Indigenous First Nations Peoples are treated as "second class citizens" in this, our traditional homeland and one of the richest countries in the world."

The IITC respectfully requests that the CERD Committee take note of all these urgent and relevant concerns. We encourage and request the Committee to invite the government of Canada, First Nations and Indigenous NGO's to submit additional detailed information to address these matters directly impacting the Indigenous Peoples of Canada as well as Canada's compliance with its obligations as a state Party to CERD.

2. We are very concerned that principle of free prior informed consent is not only violated in Canada. We are also extremely concerned regarding the failure to implement free prior informed consent by Canadian mining companies operating in other countries, on or near the traditional territories of Indigenous Peoples, posing dire threats to their health and means of subsistence. The words and spirit of the CERD is founded on the principle of non-discrimination. It does not stipulate that the state parties for the CERD are not required to uphold their obligations if the impacts fall on Peoples whose homes are outside the country. Of course such an exemption would be blatantly discriminate on its face.

In this regard we have enclosed documentation from Indigenous Peoples in two amongst the many countries impacted by Canadian mining operations, Alaska (United States of America) and Guatemala.

In Alaska, many Indigenous tribes and villages have expressed their strong opposition to the proposed Pebble Mine, the project of Northern Dynasty Minerals, a Vancouver Canada based corporation. Pebble Mine gold and copper mine would create a 1000 square mile open pit mining district at the headwaters of the two most famous salmon producing river drainages in Alaska -- the Mulchatna/ Nushagak River drainage and the Newhalen / Kvichak River drainage, both of which feed into the renowned Bristol Bay, the richest salmon fishery in the world. The proposed Pebble Mine, which would be the first of many, would include the largest dam in the world, larger than Three Gorges Dam in China, and made of earth not concrete, to hold back the toxic waste created in the mining process.

We have enclosed several formal resolutions from Indigenous village Councils located in proximity to the proposed mine stating their clear opposition to the plan, which includes the diversion of pristine rivers used by Native communities for subsistence fishing since time immemorial. The Northern Dynasty Corporation Pebble Mining project would undermine these

communities' health, way of life, sustainable social and economic development and traditional means of subsistence upon which their identity and survival is based. The Pebble mining plan would be one of the largest open pit mines in North America.

Despite their opposition, expressed formally in writing by the Indigenous Peoples who would be directly impacted through their representative tribal council governments, this Canadian company is proceeding with its plans, once again violating the free prior informed consent of Indigenous peoples with dire consequences for their ecosystems, lands waters and means of subsistence.

In Guatemala, the Glamis Gold mining company, a Canadian corporation (now owned by Goldcorp Mining as of November 2006, yet another Canadian mining company with corporate headquarters in Vancouver Canada), is proceeding to advance plans to install open pit gold mines using cyanide for ore extraction in the traditional homelands of Mayan Indian Communities in Sololá.

Central America is re-emerging as a top destination for gold mining companies," according to a February 2004 report, "Gold Mining and Exploration in Central America" commissioned by Glencairn Gold Corporation, yet another Canadian-based mining company. The report adds that gold exploration has greatly increased in the region because of relatively untapped resources, a robust gold price and laws favorable to mining and exploration.

Opposition to these mining activities by Indigenous Peoples in Guatemala has increased. A community referendum was held on June 19, 2005 in the municipality of Sipakapa, home to the Mayan Sipakapense Peoples in the southwestern department of San Marcos. The referendum asked whether the community was in favor of the open-pit mining operation being carried out by Glamis Gold, doing business in Guatemala under the name "Montana." The referendum was held pursuant to the Law on Municipalities, the Constitution of the Republic of Guatemala, the Municipal Code of Guatemala, and International Labor Organization (ILO) Convention 169, to which Guatemala is a signatory (ratified in 2002 as Government Decree 171-2002).

The results of the referendum favored "NO" by a wide margin. Out of 2,486 persons who voted, only 39 voted in favor of the mine. This clearly counters the mining company's arguments that most people want to benefit from mining as a new source of jobs for the community. In fact, most community members have refused to work on the project.

A few weeks after the Sipakapa referendum, another one was held in the municipality of Río Hondo in the eastern department of Zacapa, regarding the construction of a dam that would severely affect the communities' environment. 2,735 persons or 96% of the voters, cast a "NO" vote. Even before the Sipakapa referendum, Montana/Glamis stated in a press release that it would not abide by the results, and warned two NGO's, without naming them, of what might happen as a result of the referendum.

Enclosed is one statement that the IITC has received from impacted communities formally opposing and protesting these mining projects, which would contaminate the ground, river and lake waters of the area, appropriate and destroy subsistence farming lands and otherwise deprive these Indigenous Peoples of their traditional means of subsistence, based on small scale family farming.

The Glamis/Montana proposed open pit heap leach cyanide gold mine in Sololá Guatemala is similar to the one operated until recently directly adjacent to the Ft. Belknap Indian reservation in Montana, USA by Pegasus Mining Corporation (now reorganized as Apollo Gold) yet another Canadian mining company. That mine was also strongly opposed by the Gros Ventre Indian Nation (A-Ah-ni-nin or White Clay People) whose Treaty and reservation lands, ground water, community health, subsistence hunting areas and cultural practices were severely affected. The mine closed in 1997 after years of protest, but left persistent cyanide contamination of the local ground water and also caused the complete destruction of sacred Spirit Mountain, which was central to the religious practice of the Gros Ventre (White Clay) Indian Nation of that region.

These projects involving the actions of Canadian mining corporations operating outside of Canada are only three examples of what is now occurring in many other countries (Peru and Chile are also a notable examples), irreparably impacting the land, waters, traditional means of subsistence of Indigenous Peoples and violating their right to free prior informed consent.

In our view, such situations merit an urgent review of the Canadian government's compliance with its obligation to monitor and uphold Article 4 of the Convention as well as the provisions of CERD's General Recommendation XXIII, as follows:

“3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized...

“4. The Committee calls in particular upon States parties to:
...(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

“5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources... ”

3. Finally, we are profoundly alarmed and dismayed by the actions of the Canadian government regarding the UN Declaration on the Rights of Indigenous Peoples. It is well known by now to all that Canada was one of only two countries to vote against the

adoption of the Declaration by the UN Human Rights Council at its first session in June, 2006.

One of Canada's primary stated reasons for its opposition at that time, which it has continued to express on many occasions since then, is its objection to the Declaration's provisions calling upon states to obtain the free prior informed consent of Indigenous Peoples with regards to programs, development projects, legislative measures and other activities which affect them and their rights.

States' obligation to obtain free prior informed consent as contained in the Declaration is clearly in keeping with the decisions and recommendations of the CERD, as well as its Treaty obligations to Canadian First Nation Treaty partners.

Canada has continued to insist on the inclusion of discriminatory language in the Declaration as a requirement for its approval, and has also played an open and active role in discouraging other states from supporting the Declaration for these same reasons. Canada's current proposals for changes in the text, opposed by Indigenous Peoples in Canada and around the world, would implement a discriminatory double standard of rights for Indigenous Peoples, in violation of Article 4 of the CERD, as well as the principle of non-discrimination upon which all human rights standards are based.

Clearly the principles of the Convention, along with the principles of International law in general, do not allow for discrimination in International standard setting or the recognition of human rights, any more than they permit racial discrimination in local or national affairs.

In closing, on behalf of the International Indian Treaty Council and our affiliate the Confederacy of Treaty Six First Nations of Alberta Canada, we greatly appreciate the kind attention of the members of the CERD Committee to these pressing and in some cases extremely urgent matters. We will look forward to having the opportunity to submit additional information and documentation, as will other Indigenous organizations and First Nations in Canada.

These are pressing concerns for the rights and survival of Indigenous Peoples and are, in our view, of direct relevance to the mandate of the CERD Committee. We look forward to your response.

Respectfully Submitted,



Andrea Carmen, Executive Director,
International Indian Treaty Council