



Hupacasath First Nation

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PERMENANT FORUM

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General Comments

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My name is Ke-ke-in-is-uks, Chief Judith Sayers from the Hupacasath First Nation which is located on the west coast of British Columbia, Canada. I need to bring to your attention a matter that has created a huge stumbling block to all First Nations in BC that effects our economic and social development, denies us control over our culture, environment, education and health and is affecting our human rights.

We have been trying since the late 1800's to find a just and equitable settlement for our lands and resources that were unilaterally incorporated into the province of British Columbia and the state of Canada. We only have .001 per cent of our traditional territory on which to live and we do we have access to any of the rich resources of our territory for economic development. This has seriously impeded our economic and social development.

In 1992, the province, the state of Canada and 115 First Nations entered into a process to settle our rights to lands and resources within British Columbia. Negotiations have been taking place for nine years under this process. In May 2001, the people of British Columbia elected a new liberal government under the leadership of Gordon Campbell. This government commenced a legally binding referendum to determine a mandate for their negotiations on treaties. The Premier chose to do a referendum despite the fact that First Nations were opposed and agreement had been reached between the three parties on 19 principles to guide negotiations.

The referendum contained eight questions that were designed for people to say yes to what the provincial government wanted. The questions were leading, ambiguous and intended to spread fear and racism. The ballots for the referendum were mailed out to 2.2 million voters to vote on our rights when there are less then 200,000 indigenous peoples in BC. At the close of a six week voting period, only 30% of voters cast their ballots. The government said they would be legally bound by a majority yes vote, no matter how many votes were cast

One of the questions in the referendum concerns private property. We are a peoples who never released, extinguished or ceded our lands to the settlers. In Miguel Alfonso-Martinez's Study on

Treaties (E/CN.4/Sub.2/1999/20), he makes reference to Peoples who have not entered into any arrangement concerning their lands and resources. In the study, he pointed out the need to enter into agreements to protect our rights into the future. That is what we are trying to do. You can only have private property rights if the lands in question have been ceded, surrendered or released to the settler state. There are no such arrangements in our territory. As a result, there is a violation of international law that our territories were incorporated into the state through the doctrine of *terra nullius* or discovery which do not have any validity in domestic or international law as stated by the International Court of Justice in the decision of the *Western Sahara*.

Another question in the referendum deals with our right to self government. The province is asking people to give us delegated municipal style governments. Our governments pre exist their governments and no one can give us what we already have. It is also less than we have today, and is in violation of our right of self determination and far less than what is envisioned in the Declaration of Indigenous Rights.

To date, the Federal Government has declined to stop this process although asked to do so by First Nations in the Province. They have publicly stated they do not agree with the process but refuse to intervene even though they have the jurisdiction over First Nation Matters, and a fiduciary obligation. They are also signatory to many international instruments which oblige them to prevent discrimination and are not living up these obligations.

This referendum has been the single most destructive action taken by any government. The referendum had and is causing racism, polarization, divisiveness and contention. It has created the greatest controversy in BC history and there has been extensive media coverage, School authorities are warning principals and teachers to be aware of bullying and violence in the schools due to the increased tensions in the province caused by this referendum.

The United Nations must begin to seriously consider mechanisms for us to be able to bring complaints directly to the United Nations and to have a third party arbitrate these issues. The Declaration needs to be ratified, but we need a convention that gives processes for dealing with breaches of our rights.

Attention needs to be brought to this situation as it has far reaching implications on indigenous and non-indigenous relations. Without fair and equitable treaties, we cannot progress in our economic and social development without return of sufficient lands and resources. Pursuant to our right of self determination we need to control our culture, environment, education and health. Finally the state of Canada must be called upon to protect our human rights.

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Chief Judith Sayers
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