

**Expert Mechanism on the Rights of Indigenous Peoples
Twelfth session
15–19 July 2019
Item 6 of the provisional agenda**

Joint statement of: Amnesty International, Assembly of First Nations, BC Assembly of First Nations, Canadian Friends Service Committee (Quakers), Grand Council of the Crees (Eeyou Istchee), KAIROS: Canadian Ecumenical Justice Initiatives, Union of British Columbia Indian Chiefs, Grand Chief Wilton Littlechild, Mariam Wallet Aboubakrine, Past Chair, UN Permanent Forum on Indigenous Issues, Sheryl Lightfoot, Canada Research Chair of Global Indigenous Rights and Politics, University of British Columbia,

Speaker: Grand Chief Wilton Littlechild

Country Engagement

Recommendation:

That EMRIP remind States of the meaning of FPIC in international law, and reiterate State responsibilities when resource development is being proposed in or affecting the lands and territories of Indigenous peoples. That EMRIP further articulate the conclusions from its FPIC study in this regard.

The UN Committee on the Elimination of Racial Discrimination has called on Canada to seek EMRIP's technical advice and facilitate dialogue in three letters issued under the Early Warning and Urgent Action Procedure.

We commend CERD and would like to see more states avail themselves of the expertise available under EMRIP's mandate. We welcome the role of Treaty bodies in actively encouraging states to engage in this manner.

Canada's written responses acknowledge an obligation to live up to international standards, including FPIC. However, we are concerned that despite referring to EMRIP's study, Canada included serious misrepresentations of FPIC.

Canada asserts that its actions are consistent with international human rights standards because First Nations have been given the opportunity to consent, and could still provide consent, despite key decisions having already been made.

Canada states it has acted in a manner that is consistent with the recent study of EMRIP on free, prior and informed consent" because "[t]he process has sought to achieve consent of impacted Indigenous groups"

The response quotes the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples (Principles)*. The *Principles* include useful content on many points. However, Principle 6, is highly problematic:

The Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.

The phrase “aims to secure their free, prior, and informed consent” is inconsistent with the UN Declaration and jurisprudence from UN treaty bodies, special rapporteurs, among others. withhold consent.

Canada’s description of what has happened illustrates exactly the practice condemned by EMRIP when it wrote, “The principle of free, prior and informed consent, arising as it does within a human rights framework, does not contemplate consent as simply a “yes” to a predetermined decision.”

Consent “must include the option of withholding consent.” This conclusion clearly makes sense. It would be absurd to conclude that Indigenous peoples have the right to say “yes”, or “yes, with conditions”, but not the right to say “no”.

A longer version of this statement is being submitted in writing to EMRIP.