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## ASSEMBLY OF FIRST NATIONS

ISSUES SUBMISSION TO THE SEVENTH SESSION OF THE  
UNITED NATIONS PERMANENT FORUM ON INDIGENOUS  
(UNPFII)

*SPECIAL THEME: Climate change, bio-cultural diversity  
and livelihoods: the stewardship role of indigenous  
peoples and new challenges*

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#### **ABOUT THE ASSEMBLY OF FIRST NATIONS**

The Assembly of First Nations (AFN) is the national, political representative of First Nations governments and their citizens in Canada, including those living on reserve and in urban and rural areas. Every Chief in Canada is entitled to be a member of the Assembly. The National Chief is elected by the Chiefs in Canada, who in turn are elected by their citizens.

The role and function of the AFN is to serve as a national delegated forum for determining and harmonizing effective collective and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action and for advancing the aspirations of First Nations.

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*Submission to the Seventh Session of the United Nations Permanent Forum on Indigenous Issues*

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## 1. SPECIAL THEME

This section of the submission of the Assembly of First Nations (AFN) is to advance an understanding of First Nations views regarding *Climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges*.

Climate change, brought about by growing concentrations of greenhouse gases in the atmosphere (particularly CO<sub>2</sub>), dramatically affects the functioning, sustainability, and integrity of the world's environment. The impacts of environmental change on First Nations severely threaten the cultural, economic, spiritual, social and physical well-being and survival of First Nations.

First Nations people live in harmony with their natural environment. As people who live off the land, coastal waters, rivers and the natural world in general, climate change most deeply affects and disrupts the balance and relationship of every aspect of the lives of First Nations citizens such as their spirituality, traditional cultures and traditional knowledge, food systems, economies, health and security. As a result of climate change, the distribution and bio-diversity of aquatic and land plant and animal species are commonly affected, leading to a disappearance of traditional foods and medicines. The proliferation of diseases affecting human, plant and animal health is also common on First Nations territories. The rising water levels in coastal areas and dramatically fluctuating or decreasing water levels of inland lakes, streams, rivers and springs result in flood hazards, coastal topography, changes in fish stocks and marine life, sea mammals and birds, among other risks. Arctic sea ice is rapidly disappearing and with it, winter roads are no longer reliable. There is coastal erosion in the north from melting of the permafrost. Each of these changes in the environment has a lasting, total and interrelated harmful effect on First Nations.

### **First Nation Rights**

Indigenous peoples have the right to permanent sovereignty over their lands, territories and natural resources, especially those which they have traditionally used or occupied. Climate change is threatening Indigenous Peoples' ability to implement their rights to self-determination, their permanent sovereignty over natural resources and their relationship to their land, peace and security, development, food, cultural integrity, health and a range of other fundamental inherent, human, and Treaty-based rights that are affirmed in The United Nations Declaration on the Rights of Indigenous Peoples (*UN Declaration*). The Government of Canada did not endorse The Declaration at the UN and has not worked towards its implementation in Canada. Moreover, even though Canada is a signatory to the Kyoto Protocol, Canada has thwarted its implementation at the domestic and global level. The policies and views of the current Government of Canada on international instruments regarding Indigenous and environmental rights do not conform to Canadian law, the UN Declaration or recommendations made previously by United Nations bodies and agencies (as detailed at length in AFN's submission to the UNPFII last year).

Taking into account the rights, perspectives, needs, and traditional understandings of Indigenous Peoples, as well as their full participation in ongoing international dialogues and policy developments, international cooperation and solidarity is essential to address the diverse and sweeping challenges of climate change.

The recognition and implementation of these rights would contribute to the achievement of the Millennium Development Declaration and Goals, alleviation of poverty, sustainable development, and improvement of the well-being of Indigenous

peoples consistent with the objectives and programme of the second International Decade on the World's Indigenous Peoples.

#### **Poverty and Economic Marginalization**

First Nations are among the poorest people in Canada; their living conditions and social and health demographics being on par with those experienced in developing nations. The long history of economic and political marginalization experienced by First Nations because of Canadian political and legal neglect, racist and assimilationist policies, forced disassociation from their lands and natural resources, has left many First Nations in a position of extreme dependency, with very low capacities to adapt to further stressors to their communities.

First Nations must have the opportunity to benefit from economic and technological strategies that Canada and other States are developing to mitigate and adapt to climate change. These require recognition of Indigenous Peoples' own understandings of their traditional relationship to their lands, territories and natural resources, and their own definitions of development.

#### **Indigenous Knowledge**

The AFN asserts that effective solutions regarding the impacts of climate change on First Nations must be founded on the recognition of the need for First Nations to protect their Aboriginal and treaty rights, lands, waters and other natural resources. First Nations traditional knowledge systems are fundamental sources of knowledge that provide a direct understanding of the impacts of climate change and effectiveness of proposed responses. However, because of the special cultural, historical and legal relationship that First Nations have with the land, and the confounding effects of their widespread impoverishment, they are particularly vulnerable, often possessing a lack of resiliency that other communities in Canada possess. Efforts to combat or adapt to climate change must emphasize the uniqueness of First Nations position and role within the ecology and Canadian society, otherwise they will not be successful. Efforts at mitigation and adaptation must pay attention to the traditional knowledge of First Nations in understanding climate change and the development of responses to it.

First Nations already have developed many practical responses and solutions to climate change and global warming based on their traditional knowledge and practices. These are effective mitigation, adaptation and resiliency tools that must be supported and implemented. This vital expertise has not been effectively included, and has often deliberately been marginalized, in previous and ongoing national, regional and global discussions on climate change. This is important to ensure the survival and resiliency of First Nations in response to the threats posed by climate change, as well as to contribute to the sustainability of the global environment.

#### **Free, Prior and Informed Consent (FPIC)**

Current resource development in Canada negatively affects First Nations lands, territories and natural resources. The AFN expresses grave concern regarding the opposition by Canada, New Zealand, Australia and the United States to relevant provisions of the *UN Declaration* including the recognition of Indigenous Peoples' right to free, prior and informed consent (FPIC) regarding these developments. This opposition is contrary to recognition of FPIC under the Convention on Biological Diversity (CBD) and other international instruments. Further, these development activities, when carried out without FPIC, are typically unsustainable and lead to the destruction of our lands, territories and natural resources. All development projects on First Nations territories must respect our rights to lands, waters, resources, territories, peace and security, self-determination and FPIC processes, including the

input of Elders, and traditional knowledge holders and practitioners. The fundamental importance of our traditions, histories, laws, ceremonies and relationships with our lands must be recognized.

**In consideration of the above, the AFN calls upon the UNPFII7 to include the following in its final report:**

- a) A recommendation to the Economic and Social Council and the Human Rights Council that the Expert Mechanism on the Rights of Indigenous Peoples conduct a thematic study on climate change. The study should adopt a rights-based approach in which the rights, priorities, perspectives and solutions of Indigenous peoples are placed at the centre of decision-making processes. Such an approach is consistent with the *UN Declaration*. This study must also identify the impacts on the rights of Indigenous Peoples and the corresponding obligations of States. It should include input and participation of First Nations in Canada and be coordinated with the UNPFII and the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people.
- b) A recommendation that the UN Framework Convention on Climate Change (UNFCCC) establish formal structures for full, direct and active participation of Indigenous Peoples, including First Nations, within the official discussions and decision-making processes of the UNFCCC meetings.
- c) A recommendation that the CBD Conference of the Parties (COP) clarify its rules of procedure to enable the full, effective and equal participation of Indigenous representatives in all CBD bodies, modeled on the participatory rules in the Article 8(j) Working Group which allows Indigenous Peoples to independently table Indigenous submissions and that the CBD COP endorse and uphold the *UN Declaration* in its decisions and procedures.
- e) A condemnation of the Government of Canada for its failure to support and its efforts to undermine international legal instruments that would protect the rights of First Nations and assist in addressing the impacts of climate change, specifically the *UN Declaration* and the Kyoto Protocol.
- f) A recommendation that all nations, especially Canada, adopt the most stringent, rigorous and aggressive greenhouse gas reduction plan in accordance with target dates established by the international community in recognition of the profound importance of this plan to the sustainability of First Nations lands, waters, and communities.
- g) A recommendation that asserts that in order to conduct effective long-term planning, mitigation and adaptation efforts, First Nations must be engaged in research into climate change impacts and adaptations on their people, lands and waters.
- h) A recommendation that there must be a specific role for First Nations governments in each stage of review and response regarding all climate change policies and programs and that adequate resources for the involvement of First Nations must be allocated by Canadian governments.
- i) A recommendation that Canada must consider the economic, development and poverty-reduction needs of First Nations when developing and promoting economic and technological programs aimed at climate change mitigation and adaptation, and must provide First Nations with the opportunity to benefit economically from these strategies.

**The AFN further calls upon the UNPFII7 to take the following actions:**

a) Request a meeting with the UNFCCC Secretariat and the Chair of the Permanent Forum to:

- i. Provide the necessary support to Indigenous Peoples from all regions (including North America) to ensure full and effective participation in all levels of discussion, decision-making and implementation, and to ensure that the necessary funding is provided to enable this participation.
- ii. Include 'Indigenous Peoples and Climate Change' as a permanent item on the agenda of the UNFCCC COP/Meeting of the Parties (MOP), and of the Subsidiary Bodies' meetings with specific reference to disparities and vulnerability, mitigation, adaptation, poverty, social and cultural impacts in relation to Indigenous Peoples as well as procedures and mechanisms for evaluation and assessment of the Kyoto Protocol and its Clean Development Mechanism (CDM) and Joint Implementation (JI) initiatives.
- iii. Promote the establishment of in-session workshops, including Indigenous expert meetings within the program of work of the Subsidiary Body for Scientific and Technical Advice (SBSTA) to facilitate discussions on the effects of climate change on Indigenous Peoples, including specific impacts on fragile and vulnerable ecosystems, the interconnection between climate change and poverty, short and long term effects of the CDM, knowledge and traditional practices and participation in the evaluations of the impacts, adaptation mechanisms, mutual learning about climate change and sustainable development.
- iv. Ensure access for Indigenous Peoples from all regions to the UN Adaptation Fund to promote community based initiatives and full participation in related UN processes and include First Nations in UNFCCC capacity building initiatives to strengthen their participation in climate change negotiations.
- v. Implement Climate Impact Assessments which take into account Indigenous traditional knowledge, culture, social values, spirituality and ecosystems; as well as the full and equal participation of Indigenous Peoples in all aspects and stages of the assessment process.

**The AFN approves the following submissions and reports developed with participation of First Nations as making important contributions related to this theme:**

- a) The conclusions and recommendations of the expert seminar on Indigenous Peoples' Permanent Sovereignty over Natural Resources and their Relationship to their Land in Geneva, Switzerland 25-27 January 2006.
- b) The joint submission by the Assembly of First Nations and the International Organization of Indigenous Resource Development to the United Nations 60<sup>th</sup> Annual DPI/NGO Conference, special theme Indigenous Peoples, Culture and Traditional Knowledge, 6 September 2007.
- c) The Report from the 13<sup>th</sup> Conference of the Parties of the United Nations Framework Convention on Climate Change (COP 13) in Bali, Indonesia, 3-14 December 2007, Indigenous Peoples' perspectives, participation and statements.
- d) The Message of the Living Spirit of the Convening of Indigenous Peoples for the Healing of Mother Earth at the Cultural Territory of the Maya in Chiapas, Mexico, 10-13 March 2008.

## **2. SUBMISSIONS ON THE SIX MANDATED AREAS OF THE PERMANENT FORUM**

### **A. Economic and Social Development**

The *Declaration* and UN Millennium Development Goals #1, 2 and 3 clearly indicate support for the following economic and social development recommendations.

#### **i) Economic Development**

First Nation economies have been affected by a diverse set of factors: regional market strength, access to natural resources, local capacities to support economic objectives, human resource capacities, traditional economy strengths, and others. Consequently, economic progress is seen at the developmental stage among many First Nations.

Canada, like many wealthy nations, faces skilled labour shortages and a looming labour force replacement crisis. First Nations represent the youngest and fastest growing demographic in the country, but are burdened with unemployment rates more than twice the national average. Mutually beneficial solutions could be arrived at through a First Nations-focused labour strategy and adequate investments in primary, secondary and post-secondary education and employment supports.

New fiscal mechanisms and resource revenue sharing options are increasingly important as First Nations work to identify substantive economic and employment opportunities for First Nations citizens. Unfortunately, gains are limited when compared to the incredible wealth of resources that exist in Canada.

**The AFN calls upon the UNPFII7 to include the following in its final report recommendations in support of the following four approaches to economic development for First Nations in Canada:**

- a. **Nation Building:** Aims at organizing a national strategy that respects historical relationships, Treaty and Aboriginal rights, and efforts to engage government to government relationships, and nation to nation relationships to support First Nation economic priorities.
- b. **First Nation Economic Infrastructure:** Aims to establish physical and government infrastructure to support economic activity in and around First Nations territories.
- c. **First Nation Labour Force and Human Resources Development:** Aims to bring together the First Nation Government economic objectives more closely to the First Nation labour and training planning for economic and employment opportunities in communities and in regions.
- d. **Resources Revenue Sharing Options:** Aims at increased access to resources, as one of the most fundamental issues to improved political relationships and the development of First Nations, aims to establish framework(s) based on land use, resource revenue sharing models, and trade relationships to support access to resources and new fiscal arrangements as a component of government and nation relationships.

#### **ii) Social Development**

In cooperation with federal government departments, the AFN developed a social development policy framework setting out a five-year plan to improve social conditions in First Nations communities across the country. This plan sets out a comprehensive, coordinated approach to improving the current social development programs being delivered in First Nations communities, as funded by Indian and Northern Affairs Canada (INAC). Some of the overarching key aspects of the plan include capacity building and adequate salaries for staff, investments in information



technology, adequate funding levels for required supports and services. The plan also includes program specific action plans with concrete actions in different areas.

Current social development programs, meant to provide a basic social safety net, simply do not meet the basic needs of most First Nations individuals and families. Currently, due to the lack of resources, service providers are often restricted to only providing the most basic services such as issuing income assistance payments or enforcing child removal orders. With increased capacity and resources, First Nations could implement case management services, which would allow them to provide more than “one off services”, focusing on a comprehensive approach to client support, including file review, support throughout the service delivery period and liaison to other required client services and supports. These are critical to the success of social development programs. For example, with income assistance case management would include a client interview, profiling of needs and referrals to related services, such as mental health, education, job preparation, training, or child care, to help the client reach his objectives. It may also include a “mutual agreement” between the service provider and the client, clearly scoping out roles and responsibilities, allowing the client to become an active player in their own case management.

Social development is a community's social safety net rather than an answer to root social problems such as poor housing, lack of employment opportunities, health issues, or a lack of educational opportunities. It is therefore critical that social development work in cooperation with other programs to address these fundamental issues and break the cycle of dependency.

**The AFN calls upon the UNPFII7 to include the following recommendations in its final report:**

- a. That governments in Canada improve the social safety for First Nations through increased case management, partnerships, access to child care, and work to address the underlying causes of social problems;
- b. That Canada strive to break the cycle of dependency on income assistance and welfare among First Nations through employment and economic development opportunities;
- c. That Canada work with First Nations to keep children with their families as much as possible and reduce the incidences of abuse and violence within families;
- d. That Canada ensure the needs of those with disabilities, the elderly and the chronically ill are met through home and center-based care in a culturally appropriate manner and within their communities; and
- e. That Canada ensure that social development programs and services are delivered by First Nations for First Nations regardless of place of residence.

#### **B. Environment**

The *UN Declaration* and UN Millennium Development Goal #7 clearly indicate support for the following environment-related recommendations.

There are a variety of severe environmental challenges faced by First Nations, most resulting from energy-related and other mega-projects supported by the Canadian government, despite the negative impacts of these projects on Indigenous Peoples in Canada. While these projects can bring needed employment to impoverished First Nations, many of the developments are not sustainable and their long-term impacts on First Nations far outweigh the short-term benefits received.

While these unsustainable developments continue to occur, many of which consume extraordinary quantities of water that is in ever-increasing short supply because of climate change impacts, Canada continues to fail to meet the basic needs of First Nations. In particular, lack of access to safe drinking water is a persistent and real health threat for First Nations. Canada fails to follow through on commitments made to ensure that Canada's domestic law requires that First Nations receive the same drinking water access and protections available to other Canadians.

The obligations under domestic law for the Government of Canada to engage in consultation and accommodation of First Nations interests in lands, waters and natural resources and to ensure FPIC under the *UN Declaration* has been achieved regarding resource development projects are not being respected. There is clear agreement among First Nations, even those that have benefited from these developments, that Canada is failing to treat First Nations as equal partners by refusing to negotiate with them on a government-to-government basis regarding proposed resource development projects on or near First Nation lands and waters.

As a result, the loss of environmental resources in Canada has continued at an alarming pace, and it has not been possible for First Nations to create meaningful, long-term sustainable development of natural resources. Destruction of their lands and widespread impoverishment within First Nations continues, despite the Millennium Development Goals.

To date, Canada has no official approach to meeting these obligations, nor has it engaged First Nations in attempts to meet or discharge them. Canada's policies and programs do not reflect the sustainability needs of First Nations, nor do they address the legacy of environmental destruction occasioned by past resource development.

In addition to recommendations made under the *SPECIAL THEME: Climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges*, the AFN calls upon the UNPFII7 to include the following recommendations in its final report:

- a. That Canada cease all resource development projects approvals within lands and waters to which First Nations have rights or interests;
- b. That Canada immediately work with First Nations to develop an equitable, legal approach to the sustainable development of these lands and resources;
- c. That Canada respects the Treaty and inherent rights of First Nations to determine the scope of sustainable development within lands and waters to which they have an interest;
- d. That Canada demonstrate publicly that it considers the rights and interests of First Nations in developing environmental and sustainable development policy and programming;
- e. That Canada commit to publicly reporting that it is ensuring that FPIC processes are fully respected before any resource development affecting First Nations interests in lands and waters, resources or the environment is approved.
- f. That Canada include a gender-based analysis within all their policies and reports pertaining to environmental matters and First Nations;

### **C. Health**

The *Declaration* and UN Millennium Development Goals #3, 4, 5 and 6 clearly indicate support for the following health-related recommendations.

There is an inextricable and well-documented link between poverty, the environment, health outcomes. As noted above, environmental damage caused most harshly by

climate change will affect those who live closest to the land most quickly and it will affect the poorest among us most harshly. Like many Indigenous Peoples around the globe, First Nations citizens in Canada will most severely suffer this double impact. Evidence of this situation is demonstrated in poor health. The lack of traditional foods due to the loss of habitat, contaminants in food, water and the soil, poor air quality and over-crowding each and all contribute to shocking rates of health problems among First Nations citizens. These include extraordinarily high rates of diabetes, high concentrations of mercury and persistent organic pollutants in people, asthma and other respiratory ailments, particularly tuberculosis.

One of the most obvious relationships between poverty and the health of First Nations citizens are the rates of illness due to a lack of clean drinking water. Compared to the national average in Canada, rates of enteric, food and waterborne diseases among First Nations children under 14 years of age are twice as high for giardiasis, more than ten times higher for hepatitis A and twenty-two times higher for shigellosis. There are 100 First Nations without clean drinking water, many of which have been under boil water advisories for several years. This problem is entirely due to a lack of financial resources for the delivery of clean, potable water to First Nations homes. Sufficient resources are needed for the development of local administrative and management expertise, capital projects and operations and maintenance of facilities. Ongoing dialogue is needed regarding funding policies, and capacity building in First Nations communities to ensure all parties are involved in developing appropriate solutions. The goal must be improved wastewater treatment that will increase human health and environmental protection, clarity in wastewater treatment requirements and equitable and sustainable funding of wastewater facilities.

The recent work of the Human Rights Council to identify the right to water as a basic human right has been opposed by the Government of Canada. This shameful position, much like its position against the *UN Declaration*, is a signal of Canada's increasing isolation from the international consensus on human rights. The Assembly of First Nations will be engaging on this issue to protect the rights of First Nations with regard to water and to promote the appropriate identification of the human right to clean water.

The intimate link between poverty and Tuberculosis (TB) is multi-factorial and includes socio-economic disparity, nutritional deficiencies, crowding and limited access to care. Indigenous communities, often by-passed by the benefits of development, remain among the poorest of the poor. They face cultural barriers, language differences, geographic remoteness, economic disadvantage, all of which results in poor health indicators. Inadequate housing, mould and other contaminants increase the occurrence of TB among First Nations citizens. With living conditions akin to developing nations elsewhere, in a developed nation such as Canada Aboriginal Canadians suffer 30 times higher rates of TB than other citizens.

The confluence of two factors, the mounting stature and visibility of the UNPFII and the commitment of the World Health Organization's (WHO) STOP TB partnership to address TB and Poverty especially for rural and marginalized peoples, creates an opportunity for these two UN agencies to enable a community-led initiative to reduce the burden of TB within indigenous communities around the world.

The STOP TB Strategy, "Empower people with TB and communities" recognizing the need to engage indigenous communities, has worked with the Canadian Indigenous leadership to bring to the 7<sup>th</sup> annual UN Forum on Indigenous issues language to support a Global Indigenous STOP TB (GIS) initiative.

The GIS initiative will be administered by AFN to create linkages with global indigenous communities, between the STOP TB Partnership and the Forum's membership. GIS activities will include scanning the environment for data and best practices, and establishing surveillance measures, targets and messages. The GIS initiative will report annually to UN Permanent Forum on Indigenous Issues.

More broadly, in November 2005, the AFN tabled at a meeting with Canada's First Ministers the First Nations Agenda for Restoring and Improving Health, a plan that will strengthen and close the unacceptable gap in health outcomes between First Nations and Canadian citizens. This blueprint on Aboriginal health involved broad consultation at the national and regional level and was intended to lead to concrete initiatives to:

1. Improve the delivery of and access to health services;
2. Ensure that Aboriginal Peoples benefit fully from improvements to Canadian Health Systems; and
3. Put in place health promotion and disease prevention measures as well as programs that will address other determinants of health, in particular measures must address food contamination, mould in houses and the effects of climate change and poverty on the health of First Nations citizens in Canada.

**The AFN calls upon the UNPFII7 to include the following recommendations in its final report:**

That the UNPFII7, recognizing the extraordinary burden of TB on Indigenous communities globally, supports the Global Indigenous STOP TB initiative, agrees without financial impact to provide political encouragement to the initiative, in particular advising on links to indigenous communities and the crafting of messages, the UN Forum will work with the STOP TB partnership to establish base-line surveillance, establish targets, track impact and provide a forum for annual review of progress;

- a. That Canada must fully support implementation of the AFN Plan for Sustainability and Innovation in First Nations Health. This plan is aimed at the following goals:
  - i. Improving the health of First Nations based on improving access, quality and sustainability of health services;
  - ii. Adhering to a vision of health as part of a seamless continuum of care which links all health programs and services across all jurisdictions;
  - iii. Improving First Nations control over health care and reciprocal accountability between the federal government and First Nations;
- c. That federal and provincial governments in Canada commit to reaching all targets set out at the November 2005 meeting of First Ministers in Kelowna, British Columbia, utilizing tri-partite agreements to address jurisdictional barriers to First Nations health as indicated in the motion adopted Canada's House of Commons on "Jordan's Principle"; and,
- d. That Canada promote a population-based health approach to better address communicable diseases such as HIV and tuberculosis. A population-based approach also identifies social determinants of health as keys to success.

#### **D. Education**

Education, knowledge and skills acquisition are the cornerstone of any just society. Various experts, including Canada's parliamentary committee on Aboriginal Affairs, have clearly identified that there is no higher priority for the development of self-sufficiency and redress of the myriad issues confronting First Nations in Canada than investment in educational systems that promote culturally and linguistically relevant,

safe, secure and appropriate learning environments. This is specifically affirmed in the *Declaration* and Millennium Development Goal #2.

Contrary to these principles, First Nations in Canada face:

- A lack of school resources, libraries, access to education specialists and equipment as well as overcrowding which prevent First Nations youth from equitable employment opportunities to fill labour gaps;
- Unsafe and unhealthy school buildings, at least thirty of which are badly in need of replacement, for which the Government of Canada is not committing the necessary resources;
- Incomplete and inaccurate histories and cultures taught in classrooms throughout Canada which contribute to a continuing misunderstanding of First Nations history, rights and cultures;
- A discriminatory 2% budgetary growth cap on primary, secondary and post-secondary funding since 1996 that does not account for a 25% increase in population or rising tuition costs leading to an enormous accumulated loss in real purchasing power;
- Inadequate funding of Indigenous educational institutions to meet the needs of growing populations leading to possible closures;
- An educational attainment gap that will take at least 28 years to close when compared with the general Canadian rates of high school completion;<sup>1</sup>
- An attempt by the Government of Canada to reject its constitutional and fiduciary responsibilities by divesting its duties in health and education to provincial governments.

The Government of Canada has stated that consultation requires<sup>2</sup>:

- A consideration of the implications on aboriginal interests of proposed courses of action;
- Participants in consultations should be provided with adequate and timely information to enable them to participate effectively;
- When decisions are taken, consultation should include explanations of the nature and implications of those decisions and their relationship to the consultation process; and,
- When programming or funding changes or new programs or requirements are being considered.

Nonetheless, renewals for spending authorities pertaining to First Nations education are being carried out without respect for First Nations participation in the process. The failure to act in good faith or to meet requirements for consultation in this area is contrary to and inconsistent with the honour of the Crown.

**The AFN calls upon the UNPFII7 to include the following recommendations in its final report:**

- a. That Canada immediately increase funding to ensure equitable access to educational resources to eliminate discrimination against First Nations children; and,
- b. That Canada respect the Treaty and inherent right of First Nations to control education within their communities.

<sup>1</sup> Report of the Auditor General of Canada to the House of Commons (November 2004). Chapter 5: Indian and Northern Affairs Canada- Education Program and Post-Secondary Student Support. Office of the Auditor General.

<sup>2</sup> "Fiduciary Relationship of the Crown with Aboriginal Peoples: Implementation and Management Issues. A Guide for Managers" a Report of an Interdependent Working Group to the Committee of Deputy Ministers on Justice and Legal Affairs, October 1995.

### **E. Culture (Languages)**

There are numerous articles that reference rights and protection in the *UN Declaration* - specifically, articles 11, 13, 14 and 16. But many other articles reference rights to our culture and languages are most often the vehicle for expressing culture. For the AFN, the fundamental expression of culture is through language. Our languages are the cornerstone of who we are as First Nations citizens. Without our languages, our cultures cannot survive.

In Canada, these rights and protections are vital considering the government's historically acknowledged role in attempting to systematically extinguish our languages forever by punishing, physically abusing and assimilating those who would speak them.

Given the policy and legal legacy of government involvement in eradicating or assimilating our languages and cultures, it would have been reasonable to assume that the Government of Canada would work towards saving our languages from extinction. However, in November 2006, the 11-year languages program and its \$172-dollar budget were cut. The failure of the Government of Canada to support the *Un Declaration* highlights their lack of commitment to saving Indigenous cultures and languages.

It is believed that since European settlement, First Nations have already lost more than 100 languages in Canada and can anticipate that all but perhaps two of the 51 languages remaining may become extinct. In British Columbia, three languages in recent years has been lost and has been put on the list of the five worst global hot spots for language extinction.

For these reasons AFN recommends that the Permanent Forum put forward the following three recommendations to ECOSOC for consideration when assessing progress on goals and targets, and in its negotiations with Canada:

- a. That ECOSOC discuss with the Government of Canada the enacting of legislation to protect First Nations languages via a First Nations Languages Act consistent with current First Nations and Government of Canada language legislation;
- b. That ECOSOC consider that Canada does not recognize First Nations' jurisdiction over First Nations languages consistent with the Constitution of Canada and the UN Declaration on the Rights of Indigenous Peoples; and,
- c. That ECOSOC recommend to Canada that our programs and funding for First Nations languages be put in place in order to allow our languages to survive.

Without these protections and the support of the Government of Canada, we stand to lose not only our languages and the vital knowledge and cultural systems it envelops. When just one of our languages dies the combined human knowledge of millennia of civilization in North America dies with it - medical knowledge, science, historical information, survival and environmental sustainability techniques.

### **F. Human Rights**

Human rights are fundamental to all peoples. The AFN and First Nation governments are committed to ensuring that the full range of human rights of our citizens are protected and advanced. All First Nation citizens must have access, as a minimum, to economic, social, cultural civil and political human rights standards and protections equivalent to those enjoyed by all Canadians. We have repeatedly called on the Government of Canada to intensify its measures to close these pressing gaps. In the past year we have witnessed many missed opportunities by the current Government of Canada to alleviate the crushing poverty that prolongs some of the most pressing

human rights issues in our communities, such as the chronic housing shortage, lack of access to safe drinking water, and child welfare issues.

In Canada, the relationship between the Crown and First Nations has been marked by a history of government policies and laws that undermine First Nations collective and individual rights as peoples and persons. This has resulted in devastating and far-reaching social and economic consequences. The unacceptable gap in the standard of living that currently exists between First Nations and other social and ethnic groups in Canada are an outcome of such policies and laws. More often than not, it is First Nation women, children and elderly who suffer the deepest impact in our communities. These are a direct result of the unilateral imposition of the Indian Act and decades of policies aimed at assimilating and terminating the inherent rights and dignity of our people.

While the objective of recent legislative initiatives by the Government of Canada in the area of matrimonial real property rights and the repeal of section 67 of the *Canadian Human Rights Act* may be well intentioned, both of these initiatives have significant potential to undermine the collective Aboriginal and Treaty rights of First Nations. Without progress towards gender equality and the empowerment of First Nations women, significant progress on the UN Millennium Development Goals will not be made. As noted above, for First Nations women this includes addressing the full range of their individual and collective human rights, including the right to self determination and the recognition and implementation of First Nation governments who are empowered to address the human rights needs and interests of their citizens.

In March 2007 the Government of Canada's Ministerial Representative on Matrimonial Real Property (MRP) issued her report and recommendations on solutions to the MRP issue based on consideration of the views of First Nations people including First Nations women across Canada. The AFN generally supports the report and recommendations. The Report states that First Nations have inherent jurisdiction over this matter. For First Nations, this means that it is First Nations peoples, their governments, their rules, their procedures and their institutions that must govern the matter of matrimonial real property. The Report pointed out that federal legislation, the *Indian Act*, created this problem but that more unilaterally developed and imposed federal legislation is not the solution.

Unfortunately, the Government of Canada has tabled legislation, Bill C-47, as the response and solution to the MRP issue that ignores the MRP Report and the voices of First Nations women. The Government of Canada claims that it is responding to the principal recommendation in the report relating to the recognition of First Nations community and government jurisdiction in MRP. However, such proposed recognition is not based on recognizing the inherent collective rights of First Nations to exercise their own law-making power; rather it proposes an outside authority over First Nations governments.

The Government of Canada is merely repeating the mistakes of the past and, at worse, is continuing its practice of human rights violations directed at First Nations peoples.

Bill C-21, An Act to amend the Canadian Human Rights Act, provides for the immediate repeal of section 67 of the *Canadian Human Rights Act*. While many of the flaws in that legislation have been addressed through the parliamentary process, there has been no analysis shared by the Government of Canada on the potential impacts and costs for implementation. First Nations must have the sustainable financial resources to meet the needs of their communities and prepare for the full application of the

*Canadian Human Rights Act*. Such measures are in keeping with the constitutional imperative to protect the Aboriginal and Treaty rights of First Nations, to recognize the inherent authority of First Nations governments to address the human rights of their citizens, and to ensure that no undue financial hardship is imposed on already impoverished First Nations governments and communities. Without additional financial resources to minimize or eliminate potential exposure to the risk of complaints, as well, already under resourced First Nations may be forced to respond to such complaints, and limited First Nations resources will have to be directed to defending against such complaints and eventually taking remedial action to address issues beyond their means to rectify (e.g., improving disabled access in their communities, water, housing, education have been highlighted by the Aboriginal Affairs Committee). The 2% Cap on core First Nations services creates a significant impediment for First Nations to prepare for, mitigate and respond to claims under the CHRA.

There is significant potential for the repeal of section 67 to impact the collective rights of First Nations peoples. At a minimum, the Honour of the Crown and the requirement for reconciliation of the prior existence of First Nations with Crown sovereignty imposes an obligation on the federal government to analyze the potential impact of the repeal of section 67 on the Aboriginal and Treaty rights of First Nations peoples, before proceeding with enactment of this legislation.

A central issue is that the Government of Canada has proceeded with this legislative initiative without undertaking appropriate consultation and so, is in violation of the Duty of the Crown to consult. This also contradicts the *UN Declaration* and is a serious breach of international standards by the Government of Canada.

The AFN calls upon the UNPFII7 to include the following recommendations in its final report:

- a. That Canada reconsider moving forward with any legislative initiative that has been developed without full respect for its legal obligations to consult and accommodate First Nations interests or without the free, prior and informed consent of First Nations as required by Article 19 of the *Declaration*;
- b. That Canada ensure that the rights of all First Nations citizens are respected by appropriately addressing fundamental fiscal inequities in education, housing, health care and other social conditions that are the source of the poverty faced by First Nations and hinder achievement of the Millennium Development Goals.

### **3. HUMAN RIGHTS: DIALOGUE WITH THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE**

The Assembly of First Nations would like to thank the former Special Rapporteur, Rodolfo Stavenhagen, for his work and looks forward to a strong relationship with the incoming Special Rapporteur Professor James Anaya. The Assembly of First Nations believes that a dialogue relating to implementation gaps and challenges should be ongoing and encourages the Government of Canada to welcome these discussions as the means by which to ensure that Canadian law and policy is consistent with emerging international standards relating to Indigenous and State relations.

In particular, the AFN looks forward to working with the Special Rapporteur concerning Canada's implementation of the United Nations Declaration on the Rights of Indigenous Peoples. In light of Canada's behaviour in this regard, the AFN supports the following:

- a. That the Special Rapporteur continue to consider the *UN Declaration* on the Rights of Indigenous Peoples and fully integrate it in carrying out his diverse mandate;



- b. That Canada immediately review its conduct in relation to the adoption and implementation of the *UN Declaration*, so as to fully honour its obligations under Canadian constitutional and international law;
- c. That Canada fully take into account the far-reaching adverse impacts of its conduct on the Crown's relationship with Indigenous peoples, on the Human Rights Council, and the international human rights system as a whole;
- d. That Canada's failure to uphold the highest standards in promoting and protecting human rights and overall conduct as an elected member of the Human Rights Council be reviewed by the Council in accordance with its procedures;
- e. That Canada immediately consult with Indigenous peoples in Canada, in a manner that fully respects its constitutional obligations and fully responds to the questions and concerns raised by Indigenous peoples and organizations in Canada;
- f. That Canada view the *UN Declaration* as a living instrument, like other human rights instruments, which must have the capacity to address diverse situations now and in the future.

#### **4. ONGOING PRIORITIES AND THEMES AND FOLLOW-UP**

##### **A. Indigenous Children and Youth**

The AFN has identified children and youth as a key priority as they are our future, they are our hopes and dreams. Pre-natal and post-natal care, early childhood development and education, adequate housing, recreational services, as well as safe homes free from environmental harms such as mold and unsafe drinking waters, free from neglect, violence and addictions are but some to ensure that First Nations children grow up to reach their full potential. Special attention must also be paid to children with special needs, including those with disabilities, as they are at higher risk and require additional services and supports.

In October 2007, the AFN organized the 2007 First Nations Youth Summit which brought together hundreds of First Nations youth from across the country. Addictions, suicide, health problems, gangs, poverty and despair were but some of the issues they raised. But a message of hope, ideas and solutions also came through, resulting in the AFN's Youth Council working on a five-year work plan to address these issues and improve the lives of First Nations youth across the country.

**The AFN calls upon the UNPFII7 to include the following recommendations in its final report:**

- a. That Canada improve access to quality and culturally appropriate Early Childhood Development (ECD) and child care services for all First Nations families seeking these services, including those with children with special needs;
- b. That Canada work with First Nations governments to improve pre and post-natal care, services and supports for First Nations parents and their children;
- c. That Canada support First Nations efforts to improve case management and parental supports components of social services and child and family services accessed by First Nations families, including outreach services to help families not yet in contact with the supports programs and services;
- d. That Canada work with provincial and territorial jurisdictions as well as First Nations governments to implement Jordan's Principle to ensure that jurisdictional issues do not prevent First Nations children and youth from

- accessing the services and supports they require and which are available to the other Canadian children; and,
- e. That Canada work with provincial and territorial jurisdictions, First Nations governments and urban centers to address youth gang issues, youth suicide, education and employment/economic development related issues and obstacles.
  - f. That Canada work with provincial and territorial jurisdictions, First Nations governments to ensure adequate and safe housing.

**b. Urban Indigenous Peoples and Migration**

A lack of adequate services and infrastructure on reserve, spurred by a 2% cap on funding for core services, continues to place many First Nation citizens at risk, often forcing them out of their own communities to seek housing and employment in urban centres.

The most recent federal budget in Canada continues to erode the level of services and investment that First Nation citizens receive, focusing on transfers to the provinces rather than investing in First Nation governments to better meet the needs of their citizens.

First Nations homelessness continues to be a serious issue in many Canadian cities and national attention is focused on the issue. The rate of homelessness among First Nations is alarmingly high compared to that of other Canadians.

Solutions in these matters require that First Nations communities and their governments be equipped with proper financial resources to extend services to its urban and off reserve constituents through First Nations tribal councils, or the like, in urban areas or by signing protocol agreements with provincial and municipal governments to act as service delivery agents. Solutions also require that the Government of Canada work with First Nations, provinces and territories to facilitate the extension of First Nations jurisdiction over their citizens, beginning with recognition of the rights of First Nations governments to determine the appropriate mechanisms for the recognition of their citizens.

**The AFN calls upon the UNPFII7 to include the following recommendations in its final report:**

- a. That Canada work to ensure the fiscal capacity of First Nations governments to provide basic programs and services for all their citizens;
- b. That Canada acknowledge the right of First Nations governments to determine their own citizens and facilitate the implementation of practices consistent with that right.

**6. FUTURE WORK OF THE PERMANENT FORUM INCLUDING EMERGING ISSUES**

Given the Government of Canada's role in obstructing and delaying the adoption of the *UN Declaration* during the final stages of its adoption, its vote against *UN Declaration*, and its efforts to publicly denounce and misinterpret the validity and legality of this fundamental international human rights instrument, the AFN believes that there is no more important work for the Permanent Forum on Indigenous Issues than to work towards its full implementation in all jurisdictions. The eventual adoption of a Convention to be based on the *UN Declaration* ought to be the ultimate goal.

**The AFN therefore calls upon the UNPFII7 to recommendations in its final report:**  
That States should immediately apply all efforts to ensure implementation of the United Nations Declaration on the Rights of Indigenous Peoples, monitor and report on

failures by States to fully comply with the *UN Declaration* and begin establishing mechanisms aimed at creating a Convention on the Rights of Indigenous Peoples, in accordance with the principles, values, standards and rights recognized in the *UN Declaration*.