The Honourable John Horgan,
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OPEN LETTER URGING RESPECT FOR THE HUMAN RIGHTS OF INDIGENOUS PEOPLES IN THE PEACE VALLEY REGION

January 23, 2018

Dear Premier Horgan:

As you will be aware, Amnesty International has been deeply engaged in the struggle of Treaty 8 First Nations to protect the Peace Valley from the devastating impact of the construction of the Site C dam.[1] We have concluded, based on extensive review of the public record and lengthy research in the Peace region, that the destruction of such a significant portion of the Peace River Valley would be a profound violation of the rights of the Dunne Za and Cree peoples of Treaty 8 to make their own decisions about their lives and future,[2] to preserve their historic and sacred sites,[3] to maintain their customs and traditions of living on the land,[4] to be treated with fairness and respect by all levels of government,[5] and to have their Treaty and other agreements respected and upheld.[6] The fact that the initial decision to approve construction of the Site C dam was made by a previous government in no way diminishes the clear and pressing obligation of your government to now uphold its human rights obligations and set right their violation.

Amnesty International is far from alone in this view. Last August, Amnesty joined ten other organizations, including the Assembly of First Nations, the Union of British Columbia Indian Chiefs, KAIROS, and the Canadian Friends Service Committee, in a joint submission to the UN Committee on the Elimination of Racial Discrimination (CERD), the independent expert body

[1] See,for example, Salil Shetty, Secretary General, Amnesty International, "Open Letter to the Right Honourable Justin Trudeau and the Honourable Christy Clark," 18 November 2015, TG AMR 20/2902/2015 and Amnesty International, *'The Point of No Return': The Human Rights of Indigenous Peoples in Canada Threatened by the Site C Dam*, August 2016. AMR 20/4281/2016.
[2] See, for example, UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII concerning Indigenous Peoples*, CERD/C/51/Misc.13/Rev.4, (adopted by the Committee, 18 August 1997); *UN Declaration on the Rights of Indigenous Peoples*, UNGA Res. 61/295, 13 September 2007, Articles 3, 8, 10, 19, 23, 26, 32.
[3] *UN Declaration*, Articles 11, 31.
[4] *UN Declaration*, Articles 12, 20, 24, 25.
[5] *UN Declaration*, Articles 2, 18, 27; UNESCO, Universal Declaration on Cultural Diversity, (adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, 2 November 2001.
[6] *UN Declaration*, Article 37

that provides oversight of the international human rights treaty of the same name.[7] The submission set out three fundamental ways in which the the federal and provincial governments have violated international human rights standards by allowing construction of the Site C dam to proceed against the wishes of affected First Nations:

1. The devastating impact on the ability of Indigenous peoples to maintain their cultural and economic traditions and preserve their heritage and sacred sites as a result of the destruction of a vital ecological region and one of the last few remaining largely undeveloped tracts of land at the heart of Treaty 8.

2. The failure to respect the rights of Indigenous peoples in the decision-making process around Site C, including the refusal to adequately consider alternatives, the exclusion of any consideration of the legal implications of Treaty 8, and the failure to obtain the free, prior and informed consent of affected First Nations as required by international human rights standards such as the *UN Declaration on the Rights of Indigenous Peoples*.

3. The profound barriers to timely and effective legal remedy for these rights violations created by federal and provincial resistance to the use of judicial review as an expedient mechanism to consider whether the approval was lawful in the absence of proper consideration of Treaty obligations.

Although federal government representatives attempted to defend approval of the Site C dam before the UN Committee, asserting that consultation processes had discharged Canada's legal obligations and that robust means of legal recourse remain open to First Nations, the Committee fully adopted the concerns raised by Indigenous peoples and civil society. In its concluding observations, the Committee, a preeminent source of authoritative analysis of state obligations in respect to the human rights of Indigenous peoples, concluded that construction of the Site C dam must be halted immediately. Specifically, the Committee called on Canada to:

> 1. "Immediately suspend all permits and approvals for the construction of the Site C dam."
> 2. "Conduct a full review in collaboration with Indigenous Peoples of the violations of the right to free prior and informed consent, treaty obligations and international human rights law from the building of this dam and identify alternatives to irreversible destruction of Indigenous lands and subsistence which will be caused by this project."
> 3. "…. provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs … above."[8]

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[7] *Canada: Indigenous rights violated by the Site C dam*, Joint submission to the 93rd Session of the UN Committee on the Elimination of Racial Discrimination, 31 July- 25 August 2017.

[8] This requirement to report back to the Committee within one year was one of only five such recommendations identified for expedited reporting by August 2018, making it clear that the Committee considers the Site C situation to be a matter of particularly urgent priority. UN Committee on the

Particularly in light of this clear and unequivocal statement of Canada's responsibilities under international human rights law, which apply equally and fully to the government of British Columbia, Amnesty International was shocked that less than four months after this report was issued, your government, rather than complying with the very clear urging of the UN's top anti-racism body, would instead announce that it is "in the best interest of the province to proceed with this project."

We are further deeply concerned that in announcing this decision, you made no explicit reference to the violation of human rights that would result, other than the statement that yours would not be the first government in BC to "disappoint" Indigenous peoples. The true disappointment lies in the gap between this announcement and your previous explicit acknowledgement, while serving as Leader of the Opposition, that the rights of Indigenous peoples will be "violated by this dam."[9] Precisely because Constitutionally-entrenched and internationally-protected rights are at stake, along with your government's obligation to uphold those rights without discrimination, it is inappropriate and misleading to characterize the impact of this decision on First Nations as simply another "disappointment." The accurate and honest admission would have been to acknowledge that this was a wilful violation of the legal rights of Indigenous peoples in British Columbia that will add to and compound the harms done by a long history of such violations.

We are concerned as well by the rationale offered by your government. In announcing that construction would continue, you stated that building Site C is "the right choice for the BC economy." In our view, this assertion is not supported by the independent review carried out at the request of your government by the BC Utilities Commission. That review identified a number of scenarios in which abandoning Site C in favour of less destructive alternatives would actually save the province money, despite the money already spent on Site C and the anticipated cost of remediation. However, even if there were a financial benefit to the province in continuing Site C, this simply does not and cannot justify the deliberate violation of the rights of Indigenous peoples, or the decision to ignore the legal obligations of Treaty 8, the Canadian Constitution and international law -- especially when the people of Treaty 8 have already borne such a heavy burden from the scale and impact of existing resource development on their lands.[10]

Furthermore, the economic justification that you have claimed, including the assertion that cancelling Site C would somehow threaten schools, hospitals and other essential services, only plays into and further entrenches the longstanding harmful and racist rhetoric that places respect for the rights of Indigenous peoples outside of and in opposition to the so-called "public interest."

The decision on Site C was an historic opportunity for your government to say to the people of British Columbia that respect for Treaties and other rights of Indigenous peoples is in the best interest of everyone, that the First Nations of Treaty 8 are crucial partners in BC's economic future, and that building collaborative, respectful working relations will ultimately benefit the

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Elimination of Racial Discrimination, *Concluding Observations, Canada*, 31 August 2017. (UN Index number CERD/C/CAN/CO/21-23).

[9] "Voice of BC", Shaw Television, 8 May 2014.

[10] Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights and Energy Development in Northeast British Columbia, Canada*. 10 November 2016. AMR 20/4872/2016.

province in ways that more than offset the short term cost – if any – of abandoning Site C. Regrettably, instead of taking the high road, your government has sought to excuse its actions by invoking the status quo of a long history of government "disappointing" Indigenous peoples – even though your government explicitly promised to break with this history by upholding the *UN Declaration*, respecting the directions set out in the Supreme Court of Canada's landmark Tsilhqot'in decision and implementing the Truth and Reconciliation Commission's Calls to Action.

The only opportunity for public input into your decision was through the BC Utilities Commission hearings, a process designed to exclude consideration of the province's human rights obligations. Amnesty International sought to meet directly with you and with key Cabinet Ministers involved in the Site C decision. Only Attorney General David Eby agreed to meet with us. We aware that government ministers did meet with Treaty 8 Nations in advance of your government's decision, but we also understand that this engagement was very limited, particularly considering the severity of the impacts of finishing Site C, and fell far short of the standard of consultation and consent required by Canadian and international law. A number of prominent non-governmental organizations deeply involved with the Peace Valley also report that despite repeated requests to meet with you and members of your Cabinet, they were not provided the opportunity to share their expertise and concerns in advance of your decision. This all raises important questions about who your government was actually listening to when it made what you have characterized as a very difficult and complex decision.

Any time a government considers spending billions of dollars on a single project, entrenched interests inevitably emerge inside the bureaucracy, within political parties and their supporters, and among other sectors of society. The insufficiency of the rationale offered for continued construction of Site C, and lack of transparency around this shocking decision, inevitably contributes to perceptions and concerns that vested interests may have had undue influence in the final decision, at the cost of good public policy and regard for international law, constitutional requirements and Treaty obligations.

Fortunately, it is not too late to do the right thing. So long as the Peace Valley has not been flooded, the Site C dam is not, in fact, past the point of no return. Your government still has the opportunity and the duty to honour its commitments and uphold its legal obligations by immediately halting the Site C dam and redirecting the province's investments into sustainable, rights-respecting initiatives that will benefit all British Columbians. Amnesty International continues to urge, and in fact insist, that you do so.

Failing that, we call on your government to ensure that the next steps that it takes in respect to Site C are consistent with its human rights obligations. The Prophet River and West Moberly First Nations have now initiated a legal action to contest the dam construction in Court. As this case proceeds before the courts, it is vitally important that you not fail the people of the Peace Valley a second time. We urge your government to:

1. Ensure that its legal response to the court challenge is consistent with its commitments to uphold Treaty rights and the UN Declaration and that it seek independent, expert advice to this end.

2. Abstain from the dishonourable legal positions taken by both the BC and federal governments during the previously attempted judicial reviews of Site C, such as asserting that First Nations have an obligation to prove that they have rights in respect to this part of their Treaty territory.

3. Help facilitate a more timely and less costly resolution of the case by accepting the findings of the Joint Review Panel as sufficient to establish that impacts on First Nations use of the land would be severe, permanent and irreversible.

4. Ensure that First Nations interests and rights related to the land are not further harmed pending the eventual outcome of the case. This includes deferring or suspending any irreversible construction activities or activities that would harm vital fish and animal habitat or cultural sites.

In conclusion, I want to reiterate as forcefully as possible that the decisions you and your government make in respect to Site C are matters of human rights protected under Canadian and international law. The long and shameful history of violation of Indigenous rights in Canada, characterized by you as "disappointment", is not an excuse for any government to continue to push these legal rights aside. Instead, this tragic history and the lasting harm that it has caused to Indigenous peoples, and the relations between Indigenous and non-Indigenous peoples, requires governments such as yours to do everything in their power to break with that disgraceful past and demonstrate a willingness and determination to be held accountable to a high and rigorous standard of rights protection, precisely as you promised when you came into office.

Sincerely,

Alex Neve
Secretary General

CC: The Honourable David Eby, Attorney General of BC
The Honourable Michelle Mungall, Minister of Energy, Mines and Petroleum Resources
The Honourable Scott Fraser, Minister of Indigenous Relations and Reconciliation
Andrew Weaver, Leader of the Green Party
Chief Lynette Tsakoza, Prophet River First Nation
Chief Roland Willson, West Moberly First Nations