CLOSING SUBMISSION TO THE NEW PROSPERITY GOLD-COPPER MINE PROJECT REVIEW

August 2013

AMNESTY INTERNATIONAL

The proposed New Prosperity Gold-Copper Mine is an open pit mine that would reach a diameter of up to 1.6 km.[1] The tailings containment for the mine would have a footprint of 1200 hectares.[2] The mine would be surrounded by an exclusion area, off-limits to anyone not involved with the mine, of more than 28 km2.[3] A no-hunting buffer zone around the mine would affect an additional area of more than 30 km2.[4] The mine and its operations would affect a substantial portion of the *Teztan'Yeqox* (Fish Creek) watershed, including *Teztan Biny* (Fish Lake), with *Y'anah Biny* (Little Fish Lake) and much of the *Nabaŝ* meadows region falling within its footprint.

In the course of this review, considerable evidence has been presented concerning the vital importance of this region to the culture, economy and spiritual life of the Tsilhqot'in peoples. Dr. Nancy Turner, Distinguished Professor of Ethnoecology at the School of Environmental Studies, University of Victoria, stated that "there is no question" that the area that would be affected by the proposed mine constitutes what she calls a "cultural keystone place;" that is "a place of unique and special significance." She stated that "No other areas exist that are both accessible and comparable in terms of the opportunities this area provides for diverse cultural activities."[5]

Similarly, Dr. Cindy Ehrhart-English, who was commissioned by Taseko Mines to prepare a traditional use study of the area as part of their first application[6], has characterized the region as "a very significant place to the Tsilhqot'in."[7] In a letter to this panel, she wrote, "It is significant not only

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[1] Environmental Impact Statement for the Proposed New Prosperity Gold-Copper Mine Project. P. 64. http://www.ceaa-acee.gc.ca/050/document-eng.cfm?document=80858
[2] Environmental Impact Statement for the Proposed New Prosperity Gold-Copper Mine Project. P. 126.
[3] Patt Larcombe. "Tsilhqot'in Current Use of Nabas Lands and Resources for Traditional Purposes: Overview and Assessment of Impacts of the Proposed New Prosperity Mine." Submission to the New Prosperity Panel Topic-Specific Public Hearings on Human Environment. P.M. (Patt) Larcombe, Symbion Consultants, for Tsilhqot'in National Government. 22 July 2013. P. 35.
[4] Patt Larcombe. "Tsilhqot'in Current Use of Nabas Lands and Resources for Traditional Purposes: Overview and Assessment of Impacts of the Proposed New Prosperity Mine." Submission to the New Prosperity Panel Topic-Specific Public Hearings on Human Environment. P.M. (Patt) Larcombe, Symbion Consultants, for Tsilhqot'in National Government. 22 July 2013. P. 35.
[5] Nancy Turner. "Presentation on behalf of the Tsilhqot'in National Government on Teztan Biny and Surrounding Areas as a Cultural Keystone Place for the Tsilhqot'in Nation." Terrestrial Environment topic-specific session. 31 July 2013.
[6] Cindy Ehrhart-English. "The Heritage Significance of the Fish Lake Study Area: Ethnography. Harmony Human and Environmental Studies." A study commissioned by Taseko Mines. 1994.
[7] Cindy Ehrhart-English. "Letter of Comment to the Canadian Environmental Assessment Agency concerning the New Prosperity Project." 16 March 2013. http://www.ceaa-

because many Tsilhqot'in have used Fish Lake and Little Fish Lake in the past, but also because they have continued to use it to the present day. The cultural value they attach to this area is because it is a *place to be Tsilhqot'in*, and with very few of those wilderness areas that are heavily used for traditional purposes left intact, for which such a high cultural value is placed by Tsilhqot'in, that is invaluable."[8]

It its review of the previous proposal by Taseko mines, the federal panel concluded that "the Teztan Biny (Fish Lake) and Nabas areas are unique and of special significance to the Tsilhqot'in.... [T]he loss of the Teztan Biny (Fish Lake) and Nabas areas for current use activities, ceremonies, teaching, and cultural and spiritual practices would be irreversible, of high magnitude and have a long-term effect on the Tsilhqot'in."[9]

The importance of the previous panel findings are underlined by the land use study submitted on behalf of the Tsilhqot'in National Government which concluded that there is a "high probability" that the combined impacts of the proposed New Prosperity mine "would lead to [the] same socio-cultural, physical and mental health, and economic impacts identified for the original Prosperity."[10]

The project proponent has emphasized the potential economic benefits of the project, including the creation of jobs and expansion of the regional tax base. However, while the importance of the Teztan Biny watershed to the Tsilhqot'in people is unique and irreplaceable, resource development proposals are not. The federal government has predicted that more than 600 major resource development projects will get underway across Canada in the next decade.[11] The Tsilhqot'in National Government has clearly stated to this Panel that it is interested in pursuing development opportunities that can create jobs while also respecting their culture and rights. Critically, however, the Tsilhqot'in have also clearly and repeatedly rejected this particular proposal.

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acee.gc.ca/050/documents/p63928/87008E.pdf
[8] Letter of Comment to the Canadian Environmental Assessment Agency from Cindy Ehrhart-English concerning the New Prosperity Project. 16 March 2013. http://www.ceaa-acee.gc.ca/050/documents/p63928/87008E.pdf
[9] Report of the Federal Review Panel Established by the Minister of the Environment, Taseko Mines Limited's Prosperity Gold-Copper Mine Project. July 2, 2010. Page 203. http://www.ceaa-acee.gc.ca/050/documents/46911/46911E.pdf
[10] Patt Larcombe. "Tsilhqot'in Current Use of Nabas Lands and Resources for Traditional Purposes: Overview and Assessment of Impacts of the Proposed New Prosperity Mine." Presentation to the New Prosperity Panel Topic-Specific Public Hearings on Human Environment. P.M. (Patt) Larcombe, Symbion Consultants, for Tsilhqot'in National Government, 1 August 2013.
[11] Treasury Board of Canada. Canada's Economic Action Plan. http://actionplan.gc.ca/en/page/r2d-dr2/overview

HIGH STANDARD OF PRECAUTION REQUIRED

In Amnesty International's view, the proposed New Prosperity Mine should not be allowed to proceed over the objections of the Tsilhqot'in people. As we explained in our initial submission, relevant and persuasive international human rights standards require a high standard of precaution whenever there is the potential to harm the relationship of Indigenous peoples to their traditional lands. This high standard of precaution reflects the crucial importance of Indigenous peoples' continued access to, use and control of their lands in order to maintain their unique cultural identities and ensure the health and well-being of their families, communities and nations. The high standard of precaution required in decision making is also a reflection of the heightened risk of further harm created by the unresolved legacy of past injustices.

While the standard of protection required by international human rights law varies with the potential for harm, as a general rule, resource development projects on the lands of Indigenous peoples almost always -- if not always -- require the free, prior and informed consent of the affected peoples. In Amnesty International's considered view, a high standard of precaution is clearly required in this instance. Accordingly, the Tsilhqot'in people's explicit and reasoned rejection of the project should be a decisive consideration in the Review Panel's recommendations.

In our previous submission, Amnesty International outlined five well-established principles of international human rights law that are particularly relevant to the assessment of resource development projects that might impact on Indigenous peoples' use of their traditional lands.

> *Principle 1)* Indigenous peoples' customary rights to lands and resources must be protected, with due consideration given to Indigenous peoples' own legal traditions and land tenure systems, even where the national or local governments have not yet agreed to formal legal recognition of these rights in domestic law;[12]
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> *Principle 2)* The vital importance of lands, territories and resources to Indigenous peoples' culture, health, well-being and other rights protected in international law, requires a very high standard of

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[12] *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA Res. 61/295, 13 September 2007. Art. 26. IACHR. Report No. 75/02, Case 11.140, *Mary and Carrie Dann (United States)*, December 27, 2002. Para. 130. IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District (Belize)*, October 12, 2004. Para. 167.

precaution in all decisions potentially affecting Indigenous peoples' ownership and use of their traditional lands;[13]

Principle 3) Efforts to appropriately reconcile the rights of Indigenous peoples with other social imperatives must take into account the distinct contemporary situation of Indigenous peoples, including the unresolved legacy of past violations and heightened risk of further harm resulting from continued marginalization and discrimination;[14]

Principle 4) To achieve the standard of protection necessitated by Indigenous peoples' distinct relationship to their land and their unique circumstances, international human rights law requires the meaningful involvement of Indigenous peoples in the decision-making process so that their experience, knowledge, expertise and values can inform the outcome;[15] and

Principle 5) In instances where there is potential for significant harm, projects should proceed only with the free, prior and informed consent of the affected peoples.[16]

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[13] Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*. UN Doc. A/HRC/21/47 (6 July 2012). Para. 656. IACtHR. *Case of the Mayagna (Sumo) Awas Tingni community v. Nicaragua*, Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79. Para. 140(d). IACtHR. *Case of the Saramaka People v. Suriname*. Judgment of November 28, 2007. Paras. 120-2.

[14] UN Human Rights Committee. *Apirana Mahuika et al. v. New Zealand*. Communication No 547/1993, CCPR/C/70/D/547/1993 (2000). Para. 9.6; IACHR. Report No. 75/02, Case 11.140, *Mary and Carrie Dann (United States)*. December 27, 2002. Para. 125; IACtHR. *Case of the Indigenous Community Yakye Axa v. Paraguay*, Final Decision. Judgment of June 17, 2005. Paras. 146-148.

[15] *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA Res. 61/295, 13 September 2007. Arts. 18, 23; UN Human Rights Committee. *Apirana Mahuika et al. v. New Zealand*. Communication No 547/1993, CCPR/C/70/D/547/1993 (2000). Para. 9.5; IACHR. *Report on the Situation of Human Rights in Ecuador*. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997; IACtHR. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185. Para. 129; IACtHR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Final Decision. Judgment of June 27, 2012. Para. 164; Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya.* UN Doc. A/HRC/21/47 (6 July 2012). Para. 66.

[16] 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 on August 18, 1997); Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada* (March 2012), CERD/C/CAN/CO/19-20. Pp. 6-7; IACHR. *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System.* OEA/Ser.L/V/II. Doc. 59/06. 2010. Para. 333; IACrtHR, *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185. Para. 40; Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*. UN Doc. A/HRC/21/47 (6 July 2012). Para. 65.

These principles have been repeatedly and consistently affirmed in international human rights instruments and in the interpretative statements of expert bodies and mechanisms, including the independent experts who oversee the implementation of United Nations human rights treaties, various UN Special rapporteurs, and the human rights bodies of the Organization of American States. These principles are also set out in the 2007 *UN Declaration on the Rights of Indigenous Peoples.*

RELEVANCE OF THE *UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES*

Taseko Mines has pointed out statements by the federal government in which the government has asserted that the *UN Declaration* does not have legal effect in Canada. As addressed in greater detail in our earlier submission, the federal government's statement cannot be relied on as an accurate assessment of Canada's human rights obligations.

Human rights declarations are not, in and of themselves, directly binding on governments in the same way as conventions and other treaties. This is as true of the *UN Declaration on the Rights of Indigenous Peoples* as it is of the *Universal Declaration of Human Rights*, the foundational instrument in the international human rights system.

Critically, however, the Supreme Court of Canada has already clearly and explicitly established that all the "various sources of international human rights law" - including "declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms" - are "relevant and persuasive sources" for the interpretation of domestic law.[17] Furthermore, the Supreme Court has held that any interpretation of domestic law that would put Canada in violation of its international obligations must be strictly avoided.[18]

There is no reason to suggest that the *UN Declaration on the Rights of Indigenous Peoples* is an exception to these established principles of legal interpretation. In fact, the Federal Court of Canada, in a decision subsequently upheld by the Federal Court of Appeal[19], has explicitly stated that *UN Declaration on the Rights of Indigenous Peoples* is among the international human rights instruments that can be used to "inform the contextual approach to statutory interpretation" and that "insofar as may be

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[17] *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313. Para. 57.
[18] See *R v. Hape*, [2007] 2 S.C.R. 292 and *Canada (Human Rights Commission) v. Canada (Attorney General)*, [2012] FC 445, both of which are discussed below.
[19] *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75.

possible, an interpretation that reflects these values and principles is preferred."[20]

It is also worth noting that, contrary to the government statements cited by Taseko, the Government of Canada has already publicly acknowledged that the *UN Declaration* can be used in precisely the manner set out by Canadian courts. In 2012, in discussing Canada's endorsement of the *UN Declaration on the Rights of Indigenous Peoples* before the UN Committee on the Elimination of Racial Discrimination, Canadian representatives stated that "Canadian courts could consult international law sources when interpreting Canadian laws, including the Constitution."[21]

Significantly, the UN Declaration does not stand alone as a source of interpretation of Canada's international human rights obligations. The provisions of the Declaration reflect relevant standards set out in other instruments, including directly binding treaties and conventions, and the way that these instruments have been interpreted and applied by independent expert bodies of the United Nations and Organization of American States. [22]

FREE, PRIOR AND INFORMED CONSENT

In 1997, ten years before the adoption of the *UN Declaration*, the UN expert committee responsible for overseeing state compliance with the *Convention on the Elimination of All Forms of Racial Discrimination* -- a treaty which Canada has ratified -- set out a series of principles for implementation of the *Convention* in respect to Indigenous peoples, including an obligation to:

> 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… [and].[23]

Other UN treaty bodies have also applied the standard of free, prior and

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[20] *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445. Paras. 351-354.

[21] Committee on the Elimination of Racial Discrimination. Summary record of the 2142nd meeting – 19th and 20th periodic reports of Canada (March 2012), Para. 39.

[22] UN Human Rights Council. *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya*. U.N. Doc. A/HRC/9/9. (11 August 2008).Paras. 85, 86.

[23] Committee on the Elimination of Racial Discrimination, General Recommendation XXIII concerning Indigenous Peoples, CERD/C/51/Misc.13/Rev.4, (adopted by the Committee on August 18, 1997). See also, Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada* (March 2012), CERD/C/CAN/CO/19-20. Pp. 6-7.

informed consent in assessing whether state actions are consistent with their binding obligations.[24] The right of free, prior and informed consent has also been affirmed by a number of UN Special Rapporteurs,[25] the Inter-American Commission on Human Rights,[26] and the Inter-American Court of Human Rights.[27]

As Amnesty International noted in our prior submission to this Panel, the right of free, prior and informed consent in international law is clearly understood not as an absolute right or power of veto, but as a commensurate response to the risk of serious, irreparable harm to the fundamental rights of Indigenous peoples. A new report on extractive industries by the UN Special Rapporteur on the rights of Indigenous Peoples -- one of the world's foremost experts on international law and its application to the situation of Indigenous peoples -- provides helpful clarification on the interpretation of the standard of free, prior and informed consent.

Because of the invasive nature of extractive industries, the Special Rapporteur states that it is "a general rule that extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent."[28] The Special Rapporteur notes that because free, prior and informed consent is not an absolute right, consent may not be required if there is a determination that the resulting limitation on Indigenous peoples' rights is necessary to serve "a valid public purpose within a human rights framework"[29] and that the resulting impact on Indigenous peoples' rights is "necessary and proportional to that purpose."[30]

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[24] For example, *Ángela Poma Poma v. Peru*, U.N. Human Rights Committee, Communication No. 1457/2006, U.N. Doc. CCPR/C/95/D/1457/2006 (27 Mar. 2009). Para. 3.
[25] Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, UN Doc. A/HRC/21/47 (6 July 2012). Paras.63, 65. UN General Assembly. *UN Special Rapporteur on the right food, Interim Report*. (8 August 2012.) UN Doc. A/67/268. Para. 39. UN Human Rights Council. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari: Addendum: Mission to Canada*. (17 February 2009). A/HRC/10/7/Add.3.
[26] For example, IACHR. Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District (Belize)*, October 12, 2004. Para. 194. See also: IACHR. Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II. Doc. 59/06. 2010. Para. 333.
[27] For example, IACrtHR, *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185. Para. 40.
[28] UN Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples* (1 July 2013) A/HRC/24/41, 2013. Para. 27.
[29] UN Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples*. (1 July 2013) A/HRC/24/41, 2013. Para. 35.
[30] UN Human Rights Council. R*eport of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples*. (1 July 2013) A/HRC/24/41, 2013. Para. 36.

However the potential grounds for such justification are very narrow and the Special Rapporteur goes on to caution that

> This requirement will generally be difficult to meet for extractive industries that are carried out within the territories of indigenous peoples without their consent. In determining necessity and proportionality, due account must be taken of the significance to the survival of indigenous peoples of the range of rights potentially affected by the project. Account should also be taken of the fact that in many if not the vast majority of cases, indigenous peoples continue to claim rights to subsurface resources within their territories on the basis of their own laws or customs, despite State law to the contrary. These factors weigh heavily against a finding of proportionality of State-imposed rights limitations, reinforcing the general rule of indigenous consent to extractive activities within indigenous territories.[31]

FREE, PRIOR INFORMED CONSENT AND CANADIAN LEGAL PRECEDENTS

To date, the Supreme Court of Canada has yet to consider in any depth the consequences of international human rights law for Canadian laws and policies with respect to the land rights of Indigenous peoples. Importantly, in the Tsilhqot'in title case, which is scheduled to be heard by the Supreme Court in November, Amnesty International, in coalition with the Canadian Friends Service Committee, has been granted leave to intervene to present a legal argument based on international human rights law, as has the Hul'qumi'num Treaty Group of Vancouver Island.

In Amnesty International's view, the Supreme Court of Canada has already established legal precedents that support the right of free, prior and informed consent, as set out in the *UN Declaration* and in the larger body of international law which the *Declaration* reflects. In the landmark 1997 decision, *Delgamuukw v. British Columbia*, the Supreme Court of Canada ruled that the obligation to accommodate, or substantially address,[32] the concerns of the affected Indigenous peoples "may even require the full consent of an aboriginal nation."[33]

Much has been made of the fact that the subsequent *Haida Nation* decision states that the duty of consultation "does not give Aboriginal groups a veto

[31] UN Human Rights Council. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples*. (1 July 2013) A/HRC/24/41, 2013. Para. 36.
[32] *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. Para. 168.
[33] *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. Para. 168.

over what can be done with land pending final proof of the claim."[34] It's crucial to note that the Court's principal concern in the *Haida Nation* decision was the reconciliation of the state and Indigenous peoples in a context in which the exact rights of Indigenous peoples were the subject of unresolved disputes.[35] The Court stated that "what is required is a process of balancing interests, of give and take. This flows from the meaning of 'accommodate.'"[36] It is not surprising that in this context the Court would reject the notion of either party exercising an absolute veto. This does not mean, however, that the precedent set by *Haida Nation* in any way precludes an obligation to respect the right of free, prior and informed consent as understood in international law, as a precautionary measure applied in proportion to the risk of harm to the rights of Indigenous peoples.

In fact, the Court in *Haida Nation* strongly endorsed the treaty-making process and other negotiated resolution of land and title claims – which have an implicit goal and requirement of obtaining the consent of Indigenous peoples – as the preferred means of achieving reconciliation. The *Haida Nation* decision also affirmed the need for interim measures that would provide effective protection for Indigenous rights pending such a resolution:

> The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. It must respect these potential, but yet unproven, interests.... *To unilaterally exploit* a claimed resource during the process of proving and resolving the Aboriginal claim to that resource, may be to deprive the Aboriginal claimants of some or all of the benefit of the resource. That is not honourable [emphasis added].[37]

Furthermore, the Court in *Haida Nation* explicitly reaffirmed the precedent set in *Delgamuukw* that consent is part of the spectrum of possible accommodation that may be required based on the seriousness of potential impacts on the rights of Indigenous peoples:

The Court's seminal decision in *Delgamuukw*, in the context of an unresolved claim for title to land and resources, confirmed and expanded on the duty to consult, suggesting the content of the duty varied with the circumstances: from a minimum "duty to discuss important decisions" where the "breach is less serious or relatively minor"; through the

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[34] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 [2004] 3 SCR 511. Para. 48.
[35] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 [2004] 3 SCR 511. Para. 32.
[36] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 [2004] 3 SCR 511. Paras. 48-9.
[37] *Haida Nation v. British Columbia (Minister of Forests)*, [2004] SCC 73. Para. 27.

"significantly deeper than mere consultation" that is required in "most cases"; to "full consent of [the] aboriginal nation" on very serious issues. *These words apply as much to unresolved claims as to intrusions on settled claims* [emphasis added].[38]

CONCLUSIONS AND RECOMMENDATIONS

As shown in this submission, and in our previous submission to this Panel, international human rights law provides important and relevant guidance to the interpretation of Indigenous peoples' rights in Canada. Amnesty International submits that environmental assessment Panels in Canada should apply these standards to the interpretation of their mandates. Amnesty International sees no conflict with Canadian legal precedents. In fact, Canadian courts have established that these standards are applicable in Canada and that there is an obligation for courts as well as quasi-judicial bodies to apply them appropriately. Accordingly, we offer the following recommendations based on the analysis that we have set out:

> *Recommendation 1)* Consistent with international human rights standards, the Panel should apply the highest standard of precaution in considering the potential impact of the proposed New Prosperity mine on the Tsilhqot'in people's culture, heritage, well-being and use of the land.
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> *Recommendation 2)* In its assessment, the Panel should pay careful attention to the potential for cumulative social, cultural and environmental harm, especially in the context of unresolved harms that the Tsilhqot'in have already experienced as a consequence of discriminatory government acts and policies and the current situation of disadvantage and vulnerability experienced by the Tsilhqot'in people.
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> *Recommendation 3)* Given the evidence that has been presented of significant, irreparable harm to the Tsilhqot'in people's culture, heritage, well-being and use of the land, and the fact that the Tsilhqot'in have explicitly refused their consent to the project, the proposed project should not proceed.

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[38] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 [2004] 3 SCR 511. Para. 24. This spectrum, including consent, is restated at Paras. 30 and 40.

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Amnesty International is a global movement of more than three million people in more than 150 countries and territories, who campaign on human rights. Our vision is for all people to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

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