

# **Canada: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples**

## **Joint Submission to the UN Committee on the Elimination of Racial Discrimination**

93<sup>rd</sup> Session, 31 July - 25 August 2017

On behalf of the **Coalition for the Human Rights of Indigenous Peoples**, including in particular the following organizations:

Amnesty International Canada

Assembly of First Nations

Assemblée des Premières Nations du Québec et Labrador/Assembly of First Nations of Quebec and Labrador

British Columbia Assembly of First Nations

Canadian Friends Service Committee (Quakers)

First Nations Summit

Grand Council of the Crees (Eeyou Istchee)

Indigenous Bar Association

KAIROS

National Aboriginal Circle Against Family Violence

Native Women's Association of Canada

Oxfam Canada

Union of BC Indian Chiefs

**“The Committee requests that the State party, in consultation with indigenous peoples, consider elaborating and adopting a national plan of action in order to implement the United Nations Declaration on the Rights of Indigenous Peoples.”**

-- UNCERD Concluding Observations Canada, Eightieth Session, 4 April 2012, CERD/C/CAN/CO 19-20

Full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples* is vitally important. This is precisely because of the wide range of systemic discrimination and other human rights violations faced by First Nations, Inuit and Métis peoples in Canada, as set out in numerous other interventions before this Committee.

The Coalition for the Human Rights of Indigenous Peoples is a network of Indigenous Peoples' organizations, human rights groups and individual experts, who have worked together for almost two decades. We actively promoted adoption of the *UN Declaration* at the General Assembly. We then focussed on implementation of the *Declaration* by governments, courts, public institutions and civil society within Canada.

Our organizations welcome the numerous public statements that have now been made by the Prime Minister of Canada and his Ministers, in which they have committed “without qualification” to fully uphold the *UN Declaration* (see Annex to this Joint Statement). However, Canada is severely lacking in implementation.

We urge that implementation of the *Declaration* proceed as a matter of urgent priority and be undertaken in a manner that is collaborative, coordinated and comprehensive. We further urge that implementation be undertaken within a legislative framework, so that Indigenous peoples can be assured that Canada's commitments to uphold the *Declaration* will endure despite any future change in government.

A private members bill now before the Canadian Parliament, Bill C-262 - *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples* - contains key provisions that our organizations consider to be essential pillars of effective implementation. These are:

- Express repudiation of doctrines of superiority and colonialism
- Acknowledgement that courts, tribunals and legislators can already seek guidance from the *UN Declaration* in interpreting domestic law;
- A commitment to work collaboratively with Indigenous peoples in developing a comprehensive national action plan for implementation, as called for by CERD in its 2012 Concluding Observations;

- A process to review federal laws, policies and regulations to ensure consistency with the *Declaration*; and
- Provision for regular reporting to Parliament on progress made toward full implementation of the *Declaration*.

To be clear, Bill C-262 is not a form of enabling legislation that converts the *Declaration* all at once into an act of domestic legislation. Rather, it provides a principled and collaborative framework for the complex but essential work of ensuring that the laws, policies, and actions of government in all their myriad forms uphold and fulfill the minimum standards of the *Declaration*.

We are urging the government to adopt such a legislative framework and approach, ideally by building on the foundation of Bill C-262.

We note that over time Canada's stance on the *UN Declaration* has varied radically, depending on the government of the day. In the final years of negotiation of the *Declaration*, collaboration between Canadian government representatives and Indigenous peoples was a key factor in developing a text that could attain broad, global support. Unfortunately this period of positive and effective engagement was followed by almost a decade of active opposition to and undermining of the *Declaration*.

The consequence of that active opposition has been to obstruct and delay implementation of vital human rights standards that should have long ago been part of Canadian law and policy. Further delay in implementation would serve to compound ongoing injustices and is unacceptable.

The federal government is once again publicly committed to the full implementation of the *Declaration*. Thus there is an important and urgent opportunity not only to advance the rights of Indigenous peoples within Canada, but also to set positive examples that can benefit Indigenous peoples in other countries.

## **RECOMMENDATIONS**

1. Call on Canada to fulfill its commitments to uphold the *UN Declaration on the Rights of Indigenous Peoples* by adopting a legislative framework that includes at a minimum: repudiation of doctrines of superiority and colonialism; affirmation of the legal significance of the *Declaration* in domestic law; commitment to collaborate with Indigenous peoples in developing a national action plan for implementation; commitment to collaborate with Indigenous peoples in reviewing and reforming government laws, policies and operational practices to ensure consistency with the *Declaration*; and annual reporting to Parliament on fulfillment of these commitments.

2. To implement all 94 Calls to Action of the Truth and Reconciliation Commission of Canada, as fully agreed to by Canada. Call to Action 43 calls for federal, provincial, territorial and municipal government to adopt and implement the *UN Declaration* as the framework for reconciliation.
3. To implement the diverse commitments made by Canada in regard to the *UN Declaration*, including, *inter alia*, to obtain the free, prior and informed consent of Indigenous peoples, as self-determining peoples.
4. To report back to this Committee within one year on progress made and lessons learned in implementation of the *UN Declaration*.

### **ANNEX – Commitments made by Canada**

"We're absolutely committed to [the UN Declaration], as we are to the Calls to Action of the Truth and Reconciliation Commission."

Prime Minister Justin Trudeau, "The Current" (with Anna Maria Tremonti), CBC Radio, October 19, 2016

"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."

Office of the Prime Minister (Rt. Hon. Justin Trudeau), "Minister of Indigenous and Northern Affairs Mandate Letter", November 2015

"I'm here to announce, on behalf of Canada, that we are now a full supporter of the Declaration without qualification."

...

By adopting and implementing the Declaration, we are excited that we are breathing life into Section 35 and recognizing it now as a full box of rights for Indigenous peoples in Canada. Canada believes that our constitutional obligations serve to fulfil all of the principles of the declaration, including "free, prior and informed consent."

Minister of Indigenous and Northern Affairs (Carolyn Bennett), Speech delivered at the United Nations Permanent Forum on Indigenous Issues, New York, May 10, 2016

"Last [February], the Prime Minister struck a Working Group of Ministers on the Review of Laws and Policies related to Indigenous Peoples. ... Its mandate is ... to decolonize our federal

laws and policies and to ensure that a recognition-of-rights approach is reflected in all aspects of Canada's relationship with Indigenous peoples."

Hon. Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada, "Patriation, the Recognition of Rights and Reconciliation Speech", Constitution 150 Conference, Shaw Centre, Ottawa, Ontario, March 10, 2017

"... many of our current realities do not align with the standards of UNDRIP and, as such, they must be systematically and coherently dismantled."

Minister of Justice and Attorney General of Canada (Jody Wilson-Raybould), "Notes for an address: B.C. Cabinet and First Nations Leaders' Gathering", Vancouver, BC, September 7, 2016

"... I take this opportunity to formally retract Canada's concerns regarding paragraphs 3 and 20 on the 2014 Outcome Document from the World Conference on Indigenous Peoples. ... These paragraphs, which are free, prior and informed consent, go to the heart of the declaration."

Minister of Indigenous and Northern Affairs (Carolyn Bennett), "Speech at the United Nations Permanent Forum on Indigenous Issues 16<sup>th</sup> Session: Opening Ceremony", April 26, 2017