

Expert Mechanism on the Rights of Indigenous Peoples

Ninth session

11-15 July 2016

Item 8: *Best practices and strategies for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples*

Joint statement by: Assembly of First Nations; Amnesty International; Assemblée des Premières Nations du Québec et Labrador/Assembly of First Nations of Québec and Labrador; BC Assembly of First Nations; Canadian Friends Service Committee (Quakers); First Nations Summit; First Peoples Human Rights Coalition; Grand Council of the Crees (Eeyou Istchee); Indigenous Bar Association in Canada; Indigenous World Association; KAIROS: Canadian Ecumenical Justice Initiatives; Native Women's Association of Canada; Québec Native Women/Femmes Autochtones du Québec; Union of BC Indian Chiefs

Speaker: Kenneth Deer, Indigenous World Association

EMRIP's commitment to the ongoing monitoring of the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* is very welcomed by our organizations. This year we are pleased to report that, following a change in government last October, Canada has made significant new commitments to Indigenous Peoples and the implementation of the *UN Declaration*.

We believe that the political will to make substantive changes exists. We are, however, concerned that we are not seeing enough concrete action to match Canada's commitments. Furthermore, to date the government has often repeated the mistake of taking actions without the full and effective participation of Indigenous Peoples. Governments must recognize that unilateral actions will never lead to positive results.

Last November, Canada's new Prime Minister mandated his Indigenous Affairs minister, as a top priority, to "work with provinces and territories, and with First Nations, the Métis Nation, and Inuit, to implement recommendations of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples."¹

On the occasion of national Aboriginal day, the Prime Minister said: "We understand the importance of reconciliation and the process of truth-telling and healing in this renewal.... This work will build on our commitment ... to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples."²

¹ Prime Minister Justin Trudeau, [Office of the Prime Minister \(Rt. Hon. Justin Trudeau\), "Minister of Indigenous and Northern Affairs Mandate Letter", November 2015, at 3.](#)

² Prime Minister Justin Trudeau, "Statement by the Prime Minister of Canada on National Aboriginal Day", Ottawa, Ontario, 21 June 2016, <http://pm.gc.ca/eng/news/2016/06/21/statement-prime-minister-canada-national-aboriginal-day>

We are troubled by missed opportunities. In recent months we have been concerned by the government's lack of follow-up to adopt and implement the *UN Declaration*; the lack of cooperation with Indigenous Peoples in regard to the completion and adoption of the *American Declaration on the Rights of Indigenous Peoples*; the announcements from the Mexico, USA, and Canada Summit; the limitations placed on the implementation of Jordan's principle; and the lack of examination of the impacts on Treaty rights with the proposed Site C dam.

Adopting and implementing the *UN Declaration* are critical for the future of Canada. The Truth and Reconciliation Commission called upon the federal government, among others, to “fully adopt and implement” the *UN Declaration* as the framework for reconciliation.

We need the *UN Declaration* precisely because many laws and policies affecting the lives of Indigenous Peoples rest on foundations of colonialism and racism. We remind Canada that the Indian residential school system was an example of unilateral government policy, which is now described as genocide.³ As the TRC reminded us over and over again, “reconciliation is going to take hard work.”

Implementing the *UN Declaration* includes respecting and understanding free, prior and informed consent. FPIC is affirmed in numerous provisions of the *UN Declaration*, and in an extensive body of international human rights jurisprudence. FPIC flows from Indigenous Peoples' right of self-determination and the right to own and control their lands, territories, and resources. It is also a precautionary standard responsive to the widespread human rights violations against Indigenous peoples and the need for protection against further harm.

FPIC means recognizing and respecting Indigenous Peoples' right to governance and participation at all stages of any decision-making or actions that may affect them. FPIC is – simply put - the right to say yes and the right to say no. Indigenous Peoples have the right to say ‘yes’ to mutually beneficially initiatives that can promote healthy Indigenous Nations. Indigenous Peoples can also say ‘no’ to the imposition of decisions that would further compound their dispossession. Governments can no longer impose decisions on Indigenous Peoples.

Opposition Member of Parliament Romeo Saganash has introduced private member's Bill C-262 - *The United Nations Declaration on the Rights of Indigenous Peoples Act*. The Bill repudiates doctrines of superiority. It also rejects colonialism in favour of a contemporary approach based on good faith and on principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights. Through

³ See, e.g., Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, Final Report of the Truth and Reconciliation Commission of Canada, (Montreal/Kingston: McGill-Queen's University Press, 2015), Volume 6, at 47: “It is difficult to understand why the forced assimilation of children through removal from their families and communities—to be placed with people of another race for the purpose of destroying the race and culture from which the children come—is not a civil wrong even though it can be deemed an act of genocide under Article 2(e) of the *United Nations Convention on Genocide*.”

cooperative processes in Bill C-262, FPIC and other Indigenous rights or related State obligations could be better reflected in Canadian law. We are very supportive of this draft legislation and we urge the government to engage with this in a non-partisan manner.

We strongly encourage a legislative framework for implementing the *UN Declaration*, which would affirm its central significance in the process of national reconciliation. This is critical for the achievement of Canada's commitments. Legislative implementation of the UN Declaration will contribute to ensuring that progress made will not be easily reversed by any future government.

Our organizations have been involved in the work of achieving both the *UN Declaration* itself, as well as Canada's full commitment to its implementation. We have been deeply invested in, and have provided the leadership on, realizing the *UN Declaration* and working at all levels on implementation in Canada. Yet to date there has been minimal substantive engagement with Indigenous Peoples and their representative organizations on how the government envisions implementation of the *Declaration* will take place.

Canada is at a pivotal time. In the spirit of reconciliation, Indigenous Peoples are willing to work with the government in full partnership on the effective implementation of the *UN Declaration*. We hope they will join us.

We recommend that:

1. EMRIP remind States that unilateral actions, domestically or internationally, will lead to unjust outcomes. States should develop constructive partnerships with Indigenous Peoples for the full and effective implementation of Indigenous Peoples' human rights and related State obligations.
2. EMRIP encourage States to always work in conjunction with Indigenous Peoples, when developing laws, policies, and public statements that impact such Peoples or the *UN Declaration on the Rights of Indigenous Peoples*.
3. EMRIP affirm the importance of respecting Indigenous Peoples' governance and full participation in all activities that may affect Indigenous Peoples' human rights.
4. EMRIP urge States to adopt effective legislative frameworks to implement the *UN Declaration*. Such frameworks should include national action plans, explicitly repudiate doctrines of superiority, and reject colonialism. Bill C-262 is an excellent example of such principled and positive actions.