February 5, 2018

Open Letter to All Members of Parliament

Parliamentarians should embrace Bill C-262 as a crucial step toward shared goal of reconciliation; repudiate fear mongering and misrepresentations of *UN Declaration on the Rights of Indigenous Peoples*

The Truth and Reconciliation Commission urged all governments to implement the *United Nations Declaration on the Rights of Indigenous Peoples* as 'the framework for reconciliation' in Canada. Members of Parliament have a crucial opportunity to contribute to reconciliation by supporting Bill C-262 when it comes to a vote at second reading this month.

Bill C-262 provides a framework for the federal government to collaborate with First Nations, Inuit and the Métis Nation in the important work of ensuring that Canada's laws, policies and operational practices live up to the human rights commitments affirmed in the *UN Declaration*. As a legislative framework that integrates regular reporting to Parliament, Bill C-262 provides the means to hold this and future governments accountable for living up to the commitments that they have made to honour and respect the rights of Indigenous peoples.

Our Nations, governments and organizations welcome the fact that this private members bill now has the support of both the Liberals and NDP. In particular, we want to commend all those members of the public who have taken the time to learn about the *Declaration* and expressed their support for adoption of Bill C-262. We are looking forward to a fulsome debate over the Bill in the coming weeks and strongly urge all Parliamentarians to engage with Indigenous peoples in a serious conversation about how this Bill can be further strengthened before its eventual adoption.

In the midst of this hopeful moment, we note with concern that as momentum has built around Bill C-262, there has also been a blatant backlash in part of the media. A handful of right of center think tanks, retired civil servants and others pundits have been given a platform to grossly misrepresent the *Declaration* and promote a divisive, even racist response to the inherent rights of Indigenous peoples that is the very antithesis of reconciliation. One of the most malicious of these articles – appearing not in an obscure blog but in a national newspaper – went so far as to claim that the *Declaration* should be rejected for 'giving Aboriginals rights nobody else has.'

In the face of this fear-mongering and race-baiting, it is important to be honest and accurate about the relationship between *UN Declaration* and Canadian law. The Supreme Court of Canada has long used international human rights standards to interpret laws passed by Parliament. Furthermore, it is an

established principle of Canadian law that interpretations consistent with Canada's international human rights obligations are always to be preferred to those that would violate these commitments. There is no principled reason to make an exception for the one universal human rights instrument to specifically address the rights of Indigenous peoples.

The Canadian Constitution is a living legal instrument that evolves through its interpretation. International human rights law including *UN Declaration* is already part of this ongoing evolution. Canadian courts and the Canadian Human Rights Tribunal are already using the *UN Declaration* to help understand and apply the constitutional commitment to uphold the inherent rights of Indigenous peoples. The clock cannot be turned back.

Those stoking fears about the *Declaration* inevitably fasten on those provisions requiring that decisions affecting the lives and well-being of Indigenous peoples be made only with Indigenous peoples' free, prior and informed consent (FPIC). It is important to understand that these provisions in the *Declaration* are wholly consistent with a much wider body of international law, including how expert bodies have long interpreted and applied core international human rights Conventions such the *International Covenant on Civil and Political Rights* and the *UN Convention on the Elimination of all forms of Racial Discrimination*. In other words, even without the *Declaration*, governments and courts would be called upon to respect and implement the standard of free, prior and informed consent.

Crucially, the concept of FPIC is not foreign to Canadian law and legal history. Treaties would have no legitimacy without Indigenous consent. The Supreme Court of Canada in *Delgamuukw* (1997) and *Haida Nation* (2004) stated that Indigenous consent may be required on serious issues to prevent the Crown running roughshod over Indigenous rights and interests. In the *Tsilhqot'in* decision (2014) the Supreme Court defined Indigenous land title as including the requirement that decisions be made with Indigenous consent. Legitimate debate about implications of adhering to the *UN Declaration* cannot ignore these facts.

Furthermore, the logic behind the standard of FPIC should not be controversial for anyone genuinely committed to equality and reconciliation. Indigenous peoples or nations have the right of self-determination, consistent with the international covenants that Canada has ratified. This requires recognizing that Indigenous nations have the authority to make their own decisions. To acknowledge the grave harms that have been done to Indigenous peoples throughout our history and strive to undo and prevent such harms – as Canada committed to do when it embraced the TRC's *Calls to Action* – requires an end to the federal government arbitrarily imposing its will on Indigenous peoples.

No one can deny that profound changes are urgently needed in how the federal government relates to and treats First Nations, Inuit and the Métis Nation. The Truth and Reconciliation Commission clearly told us that reconciliation requires hard work by all sectors of society. Adoption of Bill C-262 is part of this necessary work. Our governments and organizations strongly believe that the collaborative, non-adversarial approach to law reform set out in Bill C-262 is in the best interest of all Canadians. We strongly encourage all Members of Parliament to approach the upcoming debate around Bill C-262 from this principled perspective.

BACKGROUND

The *UN Declaration* was the subject of one of the most extensive standard setting processes ever undertaken in the international human rights system. The collaboration between Canadian government representatives and Indigenous peoples during the final years of negotiation was a key factor in developing a text that could attain broad, global support. Today, the *Declaration* stands as a global human rights instrument, reaffirmed 8 times by the UN General Assembly by consensus.

Bill C-262 has five key elements:

- Bill C-262 sets out the principles that must guide implementation of the *Declaration*, including repudiation of colonialism.

- Bill C-262 provides clear public affirmation that the standards set out in the *UN Declaration* have "application in Canadian law."

- Bill C-262 requires a collaborative process for the review of federal legislation to ensure consistency with the minimum standards set out in the *UN Declaration*.

- Bill C-262 requires the federal government to work with Indigenous peoples to develop a national action plan to implement the *UN Declaration*.

- Bill C-262 provides transparency and accountability by requiring annual reporting to Parliament on progress made toward implementation of the *Declaration*.

The Coalition for the Human Rights of Indigenous Peoples

This open letter was signed by:

Amnesty International Canada

Assembly of First Nations

British Columbia Assembly of First Nations

Canadian Friends Service Committee (Quakers)

Centre for Pre-Confederation Treaties and Reconciliation

Confederacy of Treaty No 6

First Nations Summit

Grand Council of the Crees (Eeyou Istchee)

Indigenous Bar Association

Indigenous World Association

KAIROS: Canadian Ecumenical Justice Initiatives

Métis Nation

The National Aboriginal Circle Against Family Violence

Union of BC Indian Chiefs