

**UN Permanent Forum on Indigenous Issues
Seventeenth Session
Agenda Item 4: Implementation of six mandated areas**

Joint Statement of: Amnesty International; Assembly of First Nations; Assembly of First Nations of Quebec and Labrador; BC Assembly of First Nations; Canadian Friends Service Committee (Quakers); First Nations Summit; Grand Council of the Crees (Eeyou Istchee); Indigenous World Association; KAIROS: Canadian Ecumenical Justice Initiatives; Union of BC Indian Chiefs.

Speaker: Grand Chief Wilton Littlechild, Coalition for the Human Rights of Indigenous Peoples

Recommendations:

1. That the Permanent Forum to call on states to formalize their commitment to implement the *UN Declaration* through adoption of a legislative framework. Such a framework should establish collaborative processes where Indigenous peoples can be full and effective participants in the creation of a national action plan for implementation and the review and reform of national laws, policies and regulations.
2. That the Permanent Forum call on all states to establish, in collaboration with Indigenous peoples, training programs for civil servants and the judiciary to improve understanding of the Declaration and its application. We further recommend that all states adopt policies of transparency in respect to the litigations strategies taken when Indigenous rights issues come before the courts.
3. That the Permanent Forum call on all states to adopt formal mechanisms for reviewing and responding to recommendations made by UN Treaty bodies, Special rapporteurs and other human rights mechanisms and to ensure the full and effective participation of Indigenous peoples in such processes.

Our Nations and organizations commend the Permanent Forum for its continued focus on the important and urgent work of implementing the *UN Declaration on the Rights of Indigenous Peoples*. In this submission, we present a number of examples from our experiences in Canada, both positive and negative. These illustrate important directions for implementation that we believe the Permanent Forum should promote to all member states, as well as critical outstanding gaps in implementation that the international community must address.

We are pleased to note that since the last session of the Permanent Forum, the Government of Canada has publicly committed to adopting a legislative framework for implementation of the *UN Declaration*. A private members bill to this effect, Bill C-262, is currently before the federal Parliament.

The Bill sets out a principled framework for this and future federal governments to work in collaboration with First Nations, Inuit and Métis peoples to implement the *Declaration*. Measures required by the proposed law including collaborative review of existing laws to ensure consistency with the *Declaration* and joint development of a national action plan for implementation. The Bill also requires regular reporting to Parliament on the progress so that there can be greater transparency and public accountability.

Significantly, while Bill C-262 was introduced to Parliament by a member of an opposition party, MP Romeo Saganash, the governing party has recognized the non-partisan nature of this initiative and committed to support the Bill. We anticipate that the Bill will be passed this year.

Bill C-262 recognizes the fact that the *UN Declaration* already has legal effect in Canada. In Canadian legal tradition, courts are rightly expected to seek interpretations of domestic laws that conform with Canada's international human rights obligations. Indigenous peoples in Canada are already using the *Declaration* in this manner, before courts, human rights tribunals and quasi-judicial bodies such as environmental impact assessment panels.

The results so far, have been mixed. While in some instances, courts have embraced the *Declaration* as a relevant and persuasive source of interpretation, in other instances courts have demonstrated a profound misunderstanding of the *Declaration* and international law generally. In too many instances, government lawyers have actively opposed use of the *UN Declaration* by Canadian courts.

In this context, our Coalition would like to highlight a number of the Truth and Reconciliation Commission of Canada's Calls to Action that remain unimplemented. As the members of the Forum will be aware, the Truth and Reconciliation Commission called the *UN Declaration* "the framework for reconciliation" between Indigenous and non-Indigenous peoples in Canada and urged all levels of government and diverse sectors of society to engage in its implementation. The Commission's Calls to Action included calls for training on the *Declaration* for lawyers and public servants and greater transparency concerning the litigation strategies adopted by government in respect to cases concerning the rights of Indigenous peoples.

Our Coalition welcomes the fact that, consistent with Article 42 of the UN Declaration, UN Treaty bodies are increasingly engaging with the *Declaration*, not only to support calls for its implementation, but also to use the *Declaration* in the interpretation of the human rights Conventions and Covenants they are mandated to oversee.

UN treaty bodies have long been concerned with the widespread violation of the human rights of Indigenous peoples in Canada. In the Concluding Observations of its August 2017 review of Canada, the UN Committee on the Elimination of Racial Discrimination made 47 recommendations that were either specific to the situation of Indigenous peoples, or that addressed violations of the rights of Indigenous peoples, as well as those of racialized minorities. The Committee considered two of the recommendations pertaining to Indigenous land rights to be so urgent that it called for Canada to report back on its compliance within one year.

Unfortunately, Canada, like many other states does not have adequate systems in place to follow-up on the recommendations of Treaty bodies, Special rapporteurs and other human rights mechanisms in a coordinated and coherent manner. At a December 2017 meeting of federal, provincial and territorial ministers the federal government committed to developing a protocol

for follow-up on recommendations from international human rights bodies but we are not aware of any significant progress in this respect. Without a clear commitment and effective means to review and act on the recommendations that are made, state participation in Treaty body reviews risks becoming another form of rights ritualism as discussed in a previous study by the Permanent Forum.