



August 17, 2020  
Public Statement

*UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES*

## **ADOPTION OF FEDERAL IMPLEMENTATION LEGISLATION MUST NOT BE DELAYED**

Indigenous Nations and representative organizations, human rights groups, and faith communities urge the Minister of Justice to table legislation to implement the *United Nations Declaration on the Rights of Indigenous Peoples* as soon as Parliament convenes this fall. This will be a timely, positive step toward upholding Canada's human rights obligations.

We are concerned, however, that the federal government is currently preparing for a lengthy consultation process involving provinces, territories, industry and the Canadian public. Such an onerous process is unnecessary.

A similar federal bill was already passed by the House of Commons in 2018 – after public debate - and would be part of Canadian law today except for filibustering by a small group of Senators. It is vital that this urgently needed legislation not be defeated by further needless delays.

National Chief Perry Bellegarde of the Assembly of First Nations said, "Implementation legislation is about working together to put Canada's human rights commitments into practice. I ask Canadians to join us in urging the federal government to now move forward as quickly as possible. Let's make sure that Canada is on the path to implementation before this session of Parliament ends."

Grand Chief Abel Bosum of the Cree Nation Government emphasized, "It is important to recall that over 36 years has been devoted to the development, adoption and implementation of the *UN Declaration* at the United Nations. Every provision was discussed in great detail and negotiated with States – and Canada was an active participant."

The Coalition for the Human Rights of Indigenous Peoples, which brings together organizations and individuals active in the development and advancement of the *UN Declaration*, has repeatedly called for draft legislation to implement this human rights instrument.

The proposed legislation would require the federal government to consult and cooperate with First Nations, Inuit and Métis peoples to identify key measures necessary to implement the *UN Declaration*. The legislation also includes the development of a national action plan and provides transparency and accountability with annual reporting on progress.

Law Professor Brenda Gunn underlined, “What this bill essentially requires is a collaborative process to move ahead with implementation of the *Declaration*. What it will do, over time, is ensure that the interpretation and application of the legal rights of Indigenous peoples can proceed in a coherent and comprehensive way, which is something that Canada sorely needs.”

Chrystal Wàban Indigenous Rights Program Coordinator for KAIROS Canada said, “Implementation of the *UN Declaration* is an essential tool to address the profound inequalities and harms that have been inflicted on First Nations, Inuit and Métis peoples over the course of Canadian history. As many others have said before, the *UN Declaration* is the roadmap for building a society that will treat Indigenous peoples justly and of which all Canadians can be proud. The time to act is now.”

### **PROPOSED LEGISLATION IS CLOSELY BASED ON C-262**

The federal government, both during and after the 2019 federal election, committed to adopting a bill containing at least the same essential provisions as Bill C-262, a private members bill that was passed by the House of Commons in 2018.

“With Bill C-262, we saw that a broad cross-section of the Canadian public not only supports the rights of Indigenous peoples, but wants to see meaningful, concrete action to make these rights a reality,” said Ana Collins, Amnesty International Canada. “All parties in the House of Commons have expressed their support for the *Declaration*. Implementation legislation is nothing more or less than the opportunity to put that promise into action.”

Even as a handful of Senators were stalling C-262, Members of Parliament passed a unanimous, all party motion affirming the importance of the bill and urging that it be brought to a vote.

### **WE ALREADY KNOW THAT IMPLEMENTATION LEGISLATION CAN SUCCEED**

Last year, the Government of British Columbia adopted *UN Declaration* implementation legislation with similar provisions to those now proposed by the federal government. The BC legislation was adopted with the support of all parties in the provincial legislature and a number of key industry associations.

BC Regional Chief Terry Teegee stated: “What the BC legislation demonstrated is that there is a broad consensus around the need for new approaches to reconciliation. Canadians know from experience that ignoring the rights of Indigenous peoples is a recipe for disaster. Across all sectors of society, including industry, we’re seeing a new willingness to work through what it means to take Indigenous rights seriously.”

The BC government has promised to release its first, collaboratively developed implementation plan by the end of this year, setting out short, medium and long-term priorities for action.

## **LEGAL OBLIGATION TO IMPLEMENT THE DECLARATION ALREADY EXISTS**

The *UN Declaration* was adopted by the UN General Assembly on September 13, 2007 – more than a decade ago – as global, minimum standards that all states are expected to uphold. To date, the obligation to implement the *Declaration* has been affirmed nine times in consensus resolutions of the UN General Assembly. No state in the world formally opposes the *UN Declaration*.

It is anticipated that the draft legislation, like Bill C-262, will provide clear affirmation that the standards set out in the *Declaration* have “application in Canadian law.”

Canadian legal tradition assumes that governments in Canada intend to honour their international human rights commitments. As a consequence, Canadian courts and tribunals are already using the *UN Declaration* to interpret government and corporate responsibilities under domestic law.

“The *UN Declaration* is already part of the legal landscape in Canada,” emphasized Law Professor Mary Ellen Turpel-Lafond (Aki-Kwe), Director, UBC Residential School History and Dialogue Centre. “At this point, the issue is not about whether the *Declaration* will be implemented but how. For far too long, governments in Canada have relied on the courts to interpret the rights of Indigenous peoples. This approach inevitably leads to conflict and long and costly litigation. Implementation legislation is a better way forward, offering greater certainty to Indigenous and non-Indigenous peoples alike.”

## **LEGISLATION IS NECESSARY FOR RECONCILIATION AND IMPLEMENTATION OF THE TRC’S CALLS TO ACTION**

The Truth and Reconciliation Commission of Canada (TRC) stated that the *UN Declaration* is “the framework for reconciliation” at all levels and across all sectors of Canadian society. The TRC’s Calls for Action, which have been widely supported across party lines, explicitly called for implementation of the *Declaration*.

International Chief Wilton Littlechild, one of the TRC Commissioners, affirmed, “The TRC very deliberately placed a great deal of emphasis on the *UN Declaration*. Respect for the collective and individual rights of Indigenous peoples is a necessary pre-condition to guide all other reconciliation initiatives. Swift adoption of *UN Declaration* legislation in Canada is the natural next step required to urgently protect the rights of Indigenous peoples in Canada.”

Jennifer Preston of the Canadian Friends Service Committee (Quakers) said, “The work of the TRC generated tremendous public support for reconciliation. This can’t be allowed to turn into another empty promise. All those politicians and other public figures who voiced their support for the Calls for Action need to step up and support timely adoption of federal implementation legislation.”

## **FREE, PRIOR AND INFORMED CONSENT IS NOT A REASON TO DELAY IMPLEMENTATION LEGISLATION**

Objections to implementation legislation have focused largely on the *UN Declaration's* affirmation that Indigenous peoples have the right to make their own decisions about resource development on their territories.

Free, prior and informed consent is an essential component of Indigenous peoples' right of self-determination, which includes the jurisdiction to make their own decisions about how their lands will be used and developed.

Standards of consent are already part of Canadian law, dating back to the first peace and friendship Treaties. In the 2014 *Tsilhqot'in Nation* decision, the Supreme Court explicitly recognized that the right to grant or withhold consent is part of the inherent title rights of Indigenous peoples.

Chief Littlechild said, "It's irrational to oppose implementation legislation because of obligations that are already part of Canadian law. The implementation process will be a key tool to building a better common understanding of existing rights like free, prior and informed consent and what upholding these rights looks like in practice."

## **ADOPTION OF IMPLEMENTATION LEGISLATION MUST NOT BE DELAYED**

The Coalition urges the federal government to honour its promise to table legislation in the House of Commons that uses Bill C-262 as the "floor".

While there is always room for refinement of any legislation, it is crucial that an implementation bill be introduced in the House of Commons as soon as Parliament returns in the fall. It is critical to ensure the passage of such a Bill into law during the current session.

Professor Sheryl Lightfoot, Canada Research Chair of Global Indigenous Rights and Politics, said, "When that small group of Senators blocked Bill C-262, they didn't turn back the clock. But they did deny Canada a crucial opportunity to deal with the legal reality of the *UN Declaration* in a systematic and cooperative way. With a new draft federal Bill, there's another opportunity to get it right. It's crucial that this opportunity not be squandered."

-- 30 --

**The Coalition for the Human Rights of Indigenous Peoples** ([www.declarationcoaliton.ca](http://www.declarationcoaliton.ca))

This statement was endorsed by the following organizations and individuals:

Assembly of First Nations

Dr. Sheryl Lightfoot, Canada Research Chair of Global Indigenous Rights and Politics, University of British Columbia

Amnesty International Canada /  
Amnistie Internationale Canada

Dr. Wilton Littlechild, International Chief for Treaties 6, 7 and 8 and former Commissioner of the TRC of Canada

BC Assembly of First Nations

BC Treaty Commission

Canadian Friends Service Committee (Quakers)

Dr. Mary Ellen Turpel-Lafond (Aki-Kwe), Director, Residential School History and Dialogue Centre, Professor of Law, University of British Columbia

First Nations Summit

Grand Council of the Crees (Eeyou Istchee) /  
Cree Nation Government

Dr. Mariam Wallet Aboubakrine, Présidente, Association Tinhinan Canada and member Tinhinane Sahel

Indigenous-Settler Relations, Mennonite Church  
Canada

Ellen Gabriel, Kanien'kehá:ka Activist from  
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Indigenous World Association

KAIROS: Canadian Ecumenical Justice Initiatives

Professor Brenda Gunn, Robson Hall Faculty of Law, University of Manitoba

Union of British Columbia Indian Chiefs