**Expert Mechanism on the Rights of Indigenous Peoples**

**Sixteenth Session, 17 - 21 July 2023**

**Agenda Item 3: Study and advice on Constitutions, laws, legislation, policies, judicial decisions, and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with Article 38 of the Declaration.**

**Monday, 8 July 2024**

**Joint Statement of the Coalition for the Human Rights of Indigenous Peoples (Canada):**

Amnistie Francophone; Association Tinhinan; British Columbia Assembly of First Nations; British Columbia Treaty Commission; Canadian Friends Service Committee; Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government; Quebec Native Women - Femmes Autochtones Quebec; Union of British Columbia Indian Chiefs; Ellen Gabriel, Kanehsatà:ke Land Defender; Hup-Wil-Lax-A, Kirby Muldoe; International Chief Wilton Littlechild; Joshua Nichols, Professor McGill University; Lea Nicholas Mackenzie; Mariam Wallet Aboubakrine

The Coalition for the Human Rights of Indigenous Peoples welcomes the Expert Mechanism’s study on implementation of the *UN Declaration on the Rights of Indigenous Peoples* through law reform and judicial processes. While much work remains to be done to meet global commitments to fully implement the *UN Declaration*, it is heartening to see these examples from around the world.

We would like to expand upon a portion of the report dealing with implementation of the *UN Declaration* in Canada.

Paragraph 69 refers to an important recent Supreme Court of Canada decision upholding the constitutionality of 2019 legislation on child and family services for Indigenous Peoples. That legislation, co-developed with Indigenous Peoples’ organizations, affirms the right of Indigenous governments to adopt their own laws in respect to child and family services. The law also states that Indigenous laws may take precedence over provincial and territorial laws in the event of conflict or inconsistency.

The Supreme Court’s unanimous decision to uphold this law marks the first time that Canada’s highest court has used the *UN Declaration* as an interpretative source since it was adopted in 2007. In its decision, the Court refers to the *UN Declaration* as being part of “the country’s domestic positive law.” In this way, the decision clearly affirms the validity – and viability – of using the *UN Declaration* to interpret domestic laws. The fact that the Court is only now using the *Declaration* in this way also demonstrates the impact on the judiciary of Canada’s adoption of *UN Declaration* implementation legislation explicitly recognizing that the *UN Declaration* has application in Canada.

The decision is also significant because it enables First Nations, Inuit, and Métis governments to proceed with enacting their own child and family laws, without fear of challenges from provincial and territorial governments. In recognizing Indigenous governments as a distinct order of government, able to exercise their own jurisdiction, to function alongside and in cooperation with other orders of government, points to an important pathway for reconciliation and rights recognition through legislation and judicial processes.

The Coalition would like to encourage EMRIP and other States to consider how this model might be applied more widely.[[1]](#footnote-1)

The Coalition also notes that Articles 26, 27, and 40 of the *UN Declaration* – which call for implementation of the rights of Indigenous Peoples through formal legal recognition and judicial processes – all include the requirement of “due recognition” for Indigenous Peoples laws, customs and traditions.

Finally, paragraph 72 of the decision refers to Canada’s adoption of an action plan for implementing the *UN Declaration* at the federal level. Shared priority 19 of the action plan requires the Government of Canada, in consultation and cooperation with Indigenous Peoples, to “establish an independent Indigenous rights monitoring, oversight, recourse or remedy mechanism or mechanisms to provide Indigenous peoples with access to and prompt decision through just and fair procedures for dispute and conflict resolution and effective remedies for infringements/violations of their individual and collective rights”. The functions of such mechanisms could also include “advancing, monitoring and/or reporting on implementation of the *UN Declaration* and the *UN Declaration Act*, as part of ensuring accountability; promoting Indigenous rights through research and education; advancing initiatives to prevent and end systemic discrimination and other human rights violations experienced by Indigenous peoples; and contributing to the goal of rebuilding Indigenous governance and ongoing implementation of international human rights instruments in Canadian law.” If properly established with effective powers and proper resources, these mechanisms have the potential to remove barriers to justice for Indigenous Peoples by eliminating the need to institute costly and time-consuming legal proceedings.

1. Further commentary on this decision, and a subsequent Supreme Court decision, can be found at: Coalition for the Human Rights of Indigenous Peoples, “Supreme Court of Canada decisions underline the significance of the UN Declaration on the Rights of Indigenous Peoples in Canadian law,” Public Statement, 24 May 2024. https://www.declarationcoalition.com/2024/05/24/coalition-statement-supreme-court-of-canada-decisions-underline-the-significance-of-the-un-declaration-on-the-rights-of-indigenous-peoples-in-canadian-law/ [↑](#footnote-ref-1)