

Expert Mechanism on the Rights of Indigenous Peoples

Fourth session, Geneva

11-15 July 2011

**Agenda Item 5: Implementation of the UN Declaration on
the Rights of Indigenous Peoples**

Speaker: Kenneth Deer

**Joint Statement of Indigenous World Association; Assembly of First Nations;
Cowessess First Nation; First Nations Summit; Grand Council of the Crees (Eeyou
Istchee); Haudenosaunee of Kanehsatà:ke; Kakisiwew Treaty Council; Ochapowace
Cree Nation; Starblanket First Nation; Treaty 4 Chiefs; Union of British Columbia
Indian Chiefs; First Peoples Human Rights Coalition; Canadian Friends Service
Committee (Quakers); Hawai'i Institute for Human Rights; KAIROS: Canadian
Ecumenical Justice Initiatives**

Implementation of *UN Declaration on the Rights of Indigenous Peoples*

We would like to express our appreciation to the Expert Mechanism for having a standing agenda item on the implementation of the *UN Declaration on the Rights of Indigenous Peoples*. The human rights standards set out in the Declaration are crucial to the survival, dignity and well-being of Indigenous peoples worldwide. Each year it is important to evaluate both advances and challenges in the ongoing implementation.

UN Special Rapporteur on the rights of indigenous peoples, James Anaya, concluded in his August 2010 report to the UN General Assembly (A/65/264):

Implementation of the Declaration should be regarded as a political, moral and legal imperative without qualification, within the framework of the human rights objectives of the Charter of the United Nations.

Our organizations strongly agree. In view of the rampant and persistent human rights violations faced by Indigenous peoples around the world, the full and effective implementation of the *Declaration* is urgently needed.

Our organizations welcome the international consensus that has been established in support of the Declaration. States that are making sincere efforts to realize the *Declaration* in their domestic contexts should be commended. We further welcome the fact that the *Declaration* is being used by UN treaty bodies to interpret Indigenous peoples' rights and related state obligations under international treaties. Use of the *Declaration* is also being made by UN specialized agencies and the Human Rights Council's special rapporteurs and independent experts. The *Declaration* is increasingly being relied upon by domestic human rights bodies and courts.

Regrettably, however, some States, including Canada and the United States, are dishonouring their endorsements of the *Declaration* at home and abroad. They are

interpreting UNDRIP in a manner that contradicts its terms and adversely affects Indigenous peoples worldwide. They are reneging on their international obligations to respect, protect and fulfil Indigenous peoples' human rights.

In a complaint against Canada in the Canadian Human Right Tribunal, the government argued that: the *Declaration* "does not ... change Canadian laws" and "it does not impose any international or domestic legal obligations upon Canada." Yet the Canadian government is well aware that UN treaty bodies and Canada's highest court rely on declarations and other international instruments to interpret human rights and related state obligations.

The US is seeking to create a double standard with their assertion that the *UN Declaration* promotes "a new and distinct international concept of self-determination specific to indigenous peoples." As repeatedly applied by UN Treaty bodies, Permanent Forum on Indigenous Issues and Special Rapporteurs, self-determination in article 3 of the *Declaration* reflects the right of all peoples to self-determination, as stated in the two human rights Covenants.

It is also troubling that, in diverse international environmental processes, states are failing to uphold human rights, including those of Indigenous peoples. In particular, we are concerned that the minimum standards affirmed in the *Declaration* are not being respected in ongoing processes. Examples relate to the *Nagoya Protocol* on access and benefit sharing, *Convention on Biological Diversity* and *United Nations Framework Convention on Climate Change*.

For example, in the *Nagoya Protocol* and its implementation, parties are still refusing to use the term "Indigenous peoples", despite the universal understanding that this is now accepted international language.

We respectfully request that state representatives work with their colleagues to ensure that Indigenous peoples' human rights are consistently respected in all international forums.

We wish to highlight our support for the recommendation that the Human Rights Council (HRC) authorize the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to conduct an annual review on the manner in which UNDRIP is being interpreted and implemented at all levels (EMRIP, 26 August 2010 Report to the HRC (A/HRC/15/36), Proposals 4 and 5). However, we are concerned about the profound lack of financial and other resources provided to EMRIP to date.

We recommend the following measures to the Expert Mechanism on the Rights of Indigenous Peoples as a means to promote and systematize the implementation of the *UN Declaration on the Rights of Indigenous Peoples* at the national, regional and international levels. We urge EMRIP to propose to the Human Rights Council:

1. that the UN create a searchable database of specific measures, including best

practices, taken to implement the *Declaration* (as proposed by the North American Indigenous Peoples Caucus to the UN Permanent Forum on Indigenous Issues),

2. recommendations regarding states that undermine the *Declaration*, domestically or internationally, through actions that run counter to its provisions,

3. states, in conjunction with Indigenous peoples, establish national plans of work to implement the *Declaration* with clear timelines and priorities. States should report regularly on the progress and shortcomings in implementing the *Declaration* to their national legislatures and to EMRIP.

4. that all levels of government and all multilateral agencies ensure that all relevant staff are familiar with the *Declaration* and provided clear direction and support to uphold its provisions.

5. that states, in conjunction with Indigenous peoples, promote broader public awareness of and human rights education on the *Declaration* as a principled, universal framework for justice and reconciliation. States must fulfil their international obligations to uphold the human rights of all.