

# The Truth & Reconciliation Commission on the UN Declaration & the Government of Canada

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## *From the TRC's 94 Calls to Action<sup>1</sup>*

- **43.** We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
- **44.** We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

## *From the TRC's Ten Principles for Reconciliation<sup>2</sup>*

- The Truth and Reconciliation Commission of Canada believes that for Canada to flourish in the twenty-first century, reconciliation between Aboriginal and non-Aboriginal Canada must be based on the following principles:
  - **1.** The *United Nations Declaration on the Rights of Indigenous Peoples* provides the framework for reconciliation at all levels and across all sectors of Canadian society.

... “In its 2012 Interim Report, the TRC recommended that federal, provincial, and territorial governments, and all parties to the Settlement Agreement, undertake to meet and explore the *United Nations Declaration on the Rights of Indigenous Peoples*, as a framework for reconciliation in Canada. We remain convinced that the *United Nations Declaration* provides the necessary principles, norms, and standards for reconciliation to flourish in twenty-first-century Canada. A reconciliation framework is one in which Canada’s political and legal systems, educational and religious institutions, the corporate sector and civil society function in ways that are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*, which Canada has endorsed.”

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<sup>1</sup> See *Truth and Reconciliation Commission of Canada: Calls to Action* (The Truth and Reconciliation Commission of Canada, 2015), accessed December 17, 2020, [http://www.trc.ca/assets/pdf/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/assets/pdf/Calls_to_Action_English2.pdf).

<sup>2</sup> See *What We Have Learned: Principles of Truth and Reconciliation* (The Truth and Reconciliation Commission of Canada, 2015), accessed December 17, 2020, <http://www.trc.ca/assets/pdf/Principles%20of%20Truth%20and%20Reconciliation.pdf>.

## *From the TRC's Summary of the Final Report*<sup>3</sup>

### **The United Nations Declaration on the Rights of Indigenous Peoples as a framework for reconciliation**

Aboriginal peoples in Canada were not alone in the world when it came to being treated harshly by colonial authorities and settler governments. Historical abuses of Aboriginal peoples and the taking of Indigenous lands and resources throughout the world have been the subject of United Nations' attention for many years. On September 13, 2007, after almost twenty-five years of debate and study, the United Nations (UN) adopted the Declaration on the Rights of Indigenous Peoples. As a declaration, it calls upon member states to adopt and maintain its provisions as a set of "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."

The Commission concurs with the view of S. James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, who observed,

It is perhaps best to understand the Declaration and the right of self-determination it affirms as instruments of reconciliation. Properly understood, self-determination is an animating force for efforts toward reconciliation— or, perhaps, more accurately, conciliation—with peoples that have suffered oppression at the hands of others. Self-determination requires confronting and reversing the legacies of empire, discrimination, and cultural suffocation. It does not do so to condone vengefulness or spite for past evils, or to foster divisiveness, but rather to build a social and political order based on relations of mutual understanding and respect. That is what the right of self-determination of indigenous peoples, and all other peoples, is about.

Canada, as a member of the United Nations, initially refused to adopt the Declaration. It joined the United States, Australia, and New Zealand in doing so. It is not coincidence that all these nations have a common history as part of the British Empire. The historical treatment of Aboriginal peoples in these other countries has strong parallels to what happened to Aboriginal peoples in Canada. Specifically, Canada objected to the Declaration's

provisions dealing with lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and

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<sup>3</sup> See *Honouring the Truth, Reconciling for the Future: Summary of the Final Report* (The Truth and Reconciliation Commission of Canada, 2015), accessed December 17, 2020, [http://www.trc.ca/assets/pdf/Honouring\\_the\\_Truth\\_Reconciling\\_for\\_the\\_Future\\_July\\_23\\_2015.pdf](http://www.trc.ca/assets/pdf/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf).

the need to achieve an appropriate balance between the rights and obligations of Indigenous peoples, member States and third parties.

Although these four countries eventually endorsed the Declaration, they have all done so conditionally. In 2010, Canada endorsed the Declaration as a “non-legally binding aspirational document.” Despite this endorsement, we believe that the provisions and the vision of the Declaration do not currently enjoy government acceptance. However, because Canada has accepted the Declaration, we hold the federal government to its word that it will genuinely aspire to achieve its provisions.

In 2011, Canadian churches and social justice advocacy groups who had campaigned for Canada’s adoption of the Declaration urged the federal government to implement it. However, Canada’s interpretation of the Declaration remained unchanged. On September 22, 2014, at the World Conference on Indigenous Peoples in New York, the United Nations General Assembly adopted an action-oriented “Outcome Document” to guide the implementation of the Declaration. Member states from around the world committed, among other things, to the following:

Taking, in consultation and cooperation with indigenous peoples, appropriate measures at the national level, including legislative, policy, and administrative measures, to achieve the ends of the Declaration, and to promote awareness of it among all sectors of society, including members of legislatures, the judiciary and the civil service.... [para. 7] We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration [para. 8] ... [and also] encourage the private sector, civil society and academic institutions to take an active role in promoting and protecting the rights of indigenous peoples. [para. 30]

The “Outcome Document” represented an important step forward with regard to implementing the Declaration in practical terms. The development of national action plans, strategies, and other concrete measures will provide the necessary structural and institutional frameworks for ensuring that Indigenous peoples’ right to self-determination is realized across the globe. Canada issued a formal statement at the WCIP, objecting to certain paragraphs of the document related to the principle of obtaining the “free, prior and informed consent” (FPIC) of Indigenous peoples when states are making decisions that will affect their rights or interests, including economic development on their lands. Canada said,

Free, prior and informed consent, as it is considered in paragraphs 3 and 20 of the WCIP Outcome Document, could be interpreted as providing a veto

to Aboriginal groups and in that regard, cannot be reconciled with Canadian law, as it exists.... Canada cannot support paragraph 4, in particular, given that Canadian law, recently reaffirmed in a Supreme Court of Canada decision, states the Crown may justify the infringement of an Aboriginal or Treaty right if it meets a stringent test to reconcile Aboriginal rights with a broader public interest.

In a public statement, Indigenous leaders and their supporters said that Canada's concerns were unfounded, noting that

the notion that the Declaration could be interpreted as conferring an absolute and unilateral veto power has been repeatedly raised by Canada as a justification for its continued opposition to the Declaration. This claim, however, has no basis either in the UN Declaration or in the wider body of international law. Like standards of accommodation and consent set out by the Supreme Court of Canada, FPIC in international law is applied in proportion to the potential for harm to the rights of Indigenous peoples and to the strength of these rights. The word "veto" does not appear in the UN Declaration.... Canada keeps insisting that Indigenous peoples don't have a say in development on their lands. This position is not consistent with the UN Declaration on the Rights of Indigenous Peoples, decisions by its own courts, or the goal of reconciliation.

Reflecting on the importance of the Declaration to First Nations, Inuit, and Métis peoples in Canada, Grand Chief Edward John, Hereditary Chief of the Tl'azt'en Nation in northern British Columbia, explained,

We have struggled for generations for recognition of our rights. We have fought for our survival, dignity and well-being, and the struggle continues. Canada's denial of First Nations' land rights falls well short of the minimum standards affirmed by the Declaration and demonstrates a clear failure by Canada to implement its human rights obligations. Prime Minister Harper's apology for Canada's role in the Indian Residential Schools acknowledged that the policy of assimilation was wrong and has no place in our country. Yet Canada's policy of denying Aboriginal title and rights is premised on the same attitude of assimilation. It is time for this attitude and the policies that flow from it to be cast aside. The Declaration calls for the development of new relationships based on recognition and respect for the inherent human rights of Indigenous peoples.

The TRC considers "reconciliation" to be an ongoing process of establishing and maintaining respectful relationships at all levels of Canadian society. The Commission therefore believes that the United Nations Declaration

on the Rights of Indigenous Peoples is the appropriate framework for reconciliation in twenty-first-century Canada. Studying the Declaration with a view to identifying its impacts on current government laws, policy, and behaviour would enable Canada to develop a holistic vision of reconciliation that embraces all aspects of the relationship between Aboriginal and non-Aboriginal Canadians, and to set the standard for international achievement in its circle of hesitating nations.

Aboriginal peoples' right to self-determination must be integrated into Canada's constitutional and legal framework and civic institutions, in a manner consistent with the principles, norms, and standards of the Declaration. Aboriginal peoples in Canada have Aboriginal and Treaty rights. They have the right to access and revitalize their own laws and governance systems within their own communities and in their dealings with governments. They have a right to protect and revitalize their cultures, languages, and ways of life. They have the right to reparations for historical harms.

In 2014, the Supreme Court of Canada ruled that the Tsilhqot'in peoples have Aboriginal title to their lands in northern British Columbia, and "ownership rights similar to those associated with fee simple, including: the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land." The court said, "Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group."

In the face of growing conflicts over lands, resources, and economic development, the scope of reconciliation must extend beyond residential schools to encompass all aspects of Aboriginal and non-Aboriginal relations and connections to the land. Therefore, in our view, it is essential that all levels of government endorse and implement the Declaration. The Commission urges the federal government to reverse its position and fully endorse the "Outcome Document." We believe that the federal government must develop a national action plan to implement the Declaration. This would be consistent with the direction provided by the Supreme Court of Canada. More importantly, it would be consistent with the achievement of reconciliation.