

# UNION OF ONTARIO INDIANS

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

**TO:** United Nations

Office of the United Nations High Commissioner for Human Rights,

United Nations Office at Geneva,

CH 1211 Geneva 10, Switzerland

**FROM:** Anishinabek Nation Legal Department

**DATE:** March 16, 2023

**Background:**

The Anishinabek Nation is a political advocate for thirty-nine (39) First Nations across Ontario. The Anishinabek Nation delivers a variety of political advocacy programs and services in the areas of Health, Social Development, Education, Policy and Communications, Economic Development, Lands and Resources, Labour and Market Development, Restoration of Jurisdiction, Justice and Legal. Anishinabek Nation has assisted our Anishinabek First Nations in many fundamental transformation and jurisdiction related initiatives such as the development and implementation of the Anishinabek Nation Child Well-Being Law and Koganaawsawin, the Anishinabek Nation Education Agreement (now referred to as the Kinoomaadziwin Education Body), and the Anishinabek Nation Governance Agreement. The Anishinabek Nation is the oldest political organization in Ontario and can trace its roots back to the Confederacy of Three Fires, which existed long before European contact.

On December 22, 2023, the Anishinabek Nation Legal department submitted the United Nations Declaration on the Rights to Indigenous People (UNDRIP) report to Justice Canada. Through the direction of E’Dbendaagzijig (Citizens) and Ogiimah Leadership, the Anishinabek Nation was able to complete a report than encompassed recommendations for alignment of State (Canada) legislation with the United Nations Declaration on the Rights of Indigenous People.

* Anishinabek Nation’s Legal department identified twelve (12) pieces of legislation for recommendation to be reformed and transformed. These transformations will be essential to enhance recognition of Indigenous rights, acknowledgement of Indigenous jurisdiction and affirms Indigenous human rights, both collective and individually for the Anishinabek Nation.

**Current Status**

Although, the State (Canada) enacted the UNDRIP Act, the States entities (provinces and territories) and their levels of bureaucracy systems have not enacted the UNDRIP Act or principles thus creating legal implications for Indigenous peoples and the States entities. Within Anishinabek Nation’s UNDRIP submission to the State (Canada), it articulates many areas of concern and has mechanisms outlined for advancing and monitoring progress on the implementation of UNDRIP within Canada.

In particular recommendations brought forth to State (Canada):

1. Enactment of the UNDRIP legislation within the States entities (provinces and territories) and other levels of bureaucracies (cities, towns, etc.).
2. Ensure that there is consistency of legal interpretation and legal analysis to ensure the principles of UNDRIP and Indigenous rights have the value of legal equality and legal enforceability.
3. Ensure that an Indigenous Advisory Council be implemented to ensure UNDRIP is moving forward with effective mechanisms for accountability measures.

**Key Considerations**

Anishinabek Nation proposes the following effective measures be included within the establishing monitoring mechanisms at the national and regional level for implementation of the UN Declaration on the rights of Indigenous People report.

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| **Objectives** | **Anishinabek Submission** |
| 1. The international legal framework pertaining to the establishment of monitoring mechanisms regarding the Implementation of the UN Declaration on the Rights of Indigenous Peoples;
 | * Indigenous led input and feedback to be provided for the monitoring framework.
* Co-develop an outcomes-based evaluation approach requiring that the state and all nations provide proof of legislative amendments for implementation of UNDRIP;
* Effective monitoring mechanisms must include roles and responsibilities of each state entities outlining the actions that will be taken with accountable time frames.
* Co-develop solution-based strategies for when capacity gaps arise that there is strategic recourse or remedies to address accountabilities.
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| 1. Priorities of the monitoring mechanisms relative to Indigenous Peoples rights: inter alia: self-determination; free, prior and informed consent; equality and non-discrimination, culture; land, territories and resources; constitutional and legal reform, establishment of treaties and agreements, the development of a national plan of action to facilitate better implementation of the Declaration;
 | * Amendments of legislation to have consistency of legal interpretation and legal analysis to ensure the principles of UNDRIP and Indigenous rights have the value of legal equality and legal enforceability.
* Mechanisms in place that hold accountabilities to ensure that States adhere to legal precedents in regards to duty to consult with indigenous people for governmental activities relating to protection, restorations of lands, harvesting and hunting and clear cutting and impacts of mining and storage of nuclear waste with the Indigenous whom occupy the traditional lands.
* Co-develop legal and accountable frameworks between States and Indigenous people that aid in resolving Indigenous treaty implications and land claim matters within reasonable times.
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| 1. Participation of Indigenous Peoples in the establishment of monitoring mechanisms;
 | * States action plan be reported to the international monitoring mechanism that includes indigenous unaltered feedback.
* Indigenous led advisory/working group that meets with international monitoring group.
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| 1. State and regional practices on existing monitoring mechanisms for the implementation of the UNDRIP, including existing examples on the purpose and the mandate of those mechanisms;
 | * Co-develop national mechanisms with the competence to resolve conflicts between States and Indigenous peoples about treaties, agreements, and other constructive arrangements, including peace accords and reconciliation initiatives, and uphold Indigenous constitutional recognition.
* Indigenous led legal analysis of legislative reform with collaboration with State to review all recommended legislative changes and existing laws to ensure consistency of clauses, articles and/or statements.
* Indigenous led and agreed upon funding formulations that constructs fair and equal Indigenous political, legal, economic, social and cultural institutions that align with States and entities standards and legislations.
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| 1. National human rights institutions existing practices in the monitoring of the UNDRIP in their work, including through awareness raising activities, the analysis of the compatibility of existing laws with the UNDRIP, level of implementation of existing legal frameworks compliant with the UNDRIP, creating mechanisms to receive complaints about violations of the rights enshrined in the UNDRIP, and the production of annual reports on the implementation of the UNDRIP for national, regional and international bodies, including the EMRIP.
 | * Create an Indigenous specific complaints process and allow for new models that is culturally appropriate and includes Indigenous laws in complaints resolution.
* Canada be required to have a UNDRIP ombudsman for Indigenous people on their action plan implementation.
* Indigenous led development of UNDRIP activities educational resources.
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**Summary**

The proposed effective measures will assist Indigenous Nations in the State of Canada to have a steadfast implementation and ensure accountability measures are set. There is direct past impacts that connects with the State (Canada) not upholding Supreme Court decisions such as duty for consultation with Indigenous peoples. Consultation is best conceptualized as safeguards against measures that may affect Indigenous peoples’ rights, treaty obligations and inherent rights. More broadly, the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, that are designed to remedy the continuing legacies of discrimination against Indigenous peoples, should be advanced concurrently with equality funding that adheres to the right to self-government and right to autonomy as well as means ensuring financing autonomous functions. An optimistic outcome from the United Nations effective measures report should have immense focus on Indigenous led development of new models that are culturally relevant and that dismantles current structural business practices that inflict systemic racism against Indigenous peoples. The State (Canada) and it entitles (provinces and territories) and other bureaucracies (cities, towns, etc.) needs to transform these policies, structures and processes to be inclusive of UNDRIP statements and articles and be respectful of Indigenous rights including upholding treaty obligations and address root causes as there are considerable variations of systemic and systematic discrimination and racism within all legislation, regulations, policies and processes. It is fundamental that Indigenous peoples’ cultures, lands, territories and resources be protected from systemic and systematic racism and discrimination from the State (Canada) and the States entities.