

## Module #10 The United Nations Declaration on the Rights of Indigenous Peoples

### VICTORIA TAULI CORPUZ AND THE ORIGINS OF THE DECLARATION

Macli-ing Dulag . 1930 – 24 April 1980 was a *pangat* (leader) of the Butbut tribe of Kalinga province in the Philippines. He is known best as one of the leaders of the opposition to the Chico River Dam Project, which would have flooded his tribal homeland. His opposition to the dam led to his assassination by armed forces under the command of then-dictator Ferdinand Marcos. Macli-ing Dulag is among the most well-known of the many victims of Martial law under Ferdinand Marcos, and his name is inscribed on the Bantayog ng mga Bayani's Wall of Remembrance memorial in Quezon City.

After his assassination leadership of the opposition to the Chico River Dam devolved to a young nursing student, Victoria Tauli Corpuz, a member of the Kankana-ey Igorot people. She realized that the international investors of the Chico Dam project were unaware of the human rights abuses associated with the Dam. By research and fund raising she was able to travel to the economic centres investing in the project and educate them about the social impact of their business. Over the next three decades her work evolved into the First Draft of “The United Nations Declaration on the Rights of Indigenous Peoples.” The United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples in 2007.

Victoria Tauli-Corpuz was appointed as the United Nations Special Rapporteur on the rights of indigenous peoples by the Human Rights Council in 2014 and served until April 2020. As an indigenous activist, she has worked for over three decades on building movement among indigenous peoples and as an advocate for women's rights.

Ms. Tauli-Corpuz is the former Chair of the UN Permanent Forum on Indigenous Issues (2005-2010) and has served as the chairperson-rapporteur of the Voluntary Fund for Indigenous Populations. As an indigenous leader, she was actively engaged in drafting and adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007. She has founded and managed various NGOs involved in social awareness raising, climate change and the advancement of indigenous peoples' and women's rights and she is a member of United Nations Development Programme Civil Society Organizations Advisory Committee. In her capacity as the United Nations Special Rapporteur on the rights of indigenous peoples, Ms. Tauli-Corpuz provided expert testimony before the Inter-American Court of Human Rights and the African Court on human and peoples' rights and prepared policy advice to the World Bank and the World Intellectual Property Organisation (WIPO), among others.



Macli-ing Dulag



Victoria Tauli Corpuz

### **ADOPTION OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the [General Assembly on Thursday, 13 September 2007](#), by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).

Years later the four countries that voted against have reversed their position and now support the UN Declaration. Today the Declaration is the most comprehensive international instrument on the rights of indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

### **BRITISH COLUMBIA DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT**

On November 28, 2019 British Columbia passed the UNDRIP Act and has invited Indigenous Peoples, communities and nations as full participants in the social, cultural and economic landscape of the province. The Act is intended to bring all British Columbia law into compliance with the United Nations Declaration on the Rights of Indigenous peoples. The Act is intended to demonstrate respect for Indigenous cultures and to tangibly demonstrate this respect through Indigenous maintenance, control, protection and development of our cultural heritage resources, intellectual property, art, spiritual traditions, knowledge systems, economic systems, food systems and spiritual and sacred sites.

Passage of this legislation is intended to ensure that governance of the economy respects, acknowledges and upholds Indigenous rights and interests and First Nations title, is co-led with Indigenous Peoples, and ensures that all First Nations have economic opportunities and benefit from the lands and resources in their territories.

United Nations Declaration on the Rights of Indigenous Peoples Act June 21, 2021

This federal legislation provides a framework for reconciliation, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith. It also repudiates previous historic government policies and practices based on or advocating the superiority of peoples or individuals on the basis of

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national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and *terra nullius*. And explicitly states that these are racist, scientifically false, legally invalid, morally condemnable and socially unjust.

With this legislation Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights. The Act emphasizes the urgent need to respect and promote the inherent rights of Indigenous peoples especially their rights to their lands, territories and resources.

The Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government. The Government of Canada welcomes opportunities to work cooperatively with those governments, Indigenous peoples and *other sectors of society* towards achieving the objectives of the Declaration.

### RELATIONSHIP OF THE TRUTH AND RECONCILIATION COMMISSION CALLS TO ACTION TO UNDRIP

*“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.”* Call to Action #43, Truth and Reconciliation Commission final Report

As we have seen in Module #5 in the Indian Schools Settlement Agreement there was set aside \$60 million for the Truth and Reconciliation Commission (TRC) to document and preserve the experiences of survivors. In June 2015, the TRC released an executive summary of its findings along with 94 "calls to action" regarding reconciliation between Canadians and Indigenous Peoples.

The Indigenous Watchdog web site is available at the web address below:

<https://www.indigenouswatchdog.org/2022/04/26/how-many-of-the-trc-calls-to-action-are-complete-dont-ask-the-federal-government/>

On that web site is posted the watchdogs' opinion of progress on the Calls to Action. The federal government is directly or jointly accountable for 76 of the 94 Truth and Reconciliation Commission of Canada's Calls to Action. The official government website *“Delivering on Truth and Reconciliation Commission Calls to Action”* provides detailed explanations of actions they are delivering to advance each one. In addition to their perspectives, three other independent organizations also deliver their own perspectives on how the Calls to Action are advancing – or not: CBC's *“Beyond94”*, Yellowhead Institute's and Indigenous Watchdog – TRC Status Updates – April 4, 2022

The federal government states that they have completed 17 Calls to Action, CBC (8), Yellowhead Institute (8) and Indigenous Watchdog (7) ranking of those same 17 Calls to Action.

Based on the above, we can more realistically state that based on the three independent views of the same 17 Calls to Action ranked as complete by the federal government, **only 5 are ranked as complete** by all four organizations: 13, 15, 80, 83 and 94.

So what about the other 12?

- 7 are all classed as incomplete by all three independent organizations: (4, 14, 25, 43, 67, 78, 87)
- 2 are ranked as complete by CBC and Yellowhead Institute and incomplete by Indigenous Watchdog (41, 88)

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- 1 is ranked as complete by CBC and Indigenous Watchdog and incomplete by Yellowhead (84)
- 1 is ranked as complete by Yellowhead Institute and incomplete by CBC and Indigenous Watchdog (72)
- 1 is ranked as complete by Indigenous Watchdog and incomplete by CBC and Yellowhead

The 5 calls to action ranked as complete are a small portion of the 76 Calls to Action for which the federal government has responsibility.

### IMPLEMENTATION OF UNDRIP IN OTHER JURISDICTIONS

As a General Assembly Declaration, UNDRIP is not a legally binding instrument under international law. However, implementation of UNDRIP occurs through the laws of nation states. After Australia adopted UNDRIP legislative changes were introduced.

Aboriginal leaders of Queensland visited Musqueam in 2018. They were on a fact-finding tour of the Americas, looking for precedent to improve their lives under UNDRIP in Australia. They had participated in an innovative program launched in 2009 shortly after Australia adopted UNDRIP whereby 7% of the State of Queensland tax on Commercial property was set aside for 10 years to establish a land acquisition fund for their communities. They used these funds to establish a land base for their 250,000 members.

The Queensland Aborigines had never had land set aside for their use as in Canada and the United States of America. The funds established legal entities called Aboriginal Land Companies. The Aboriginal leaders were in Canada to research service delivery on Canadian reserves for housing and health. They were also researching Economic Development through real estate, as Musqueam has done.

According to the Australian Human Rights commission, “... *The Australian Government has not, however:*

- *taken steps to implement the UNDRIP into law, policy and practice.*
- *Negotiated with indigenous peoples a National Action Plan to implement the UNDRIP*
- *Audited existing laws, policies and practice for compliance with the UNDRIP.”*

### Bolivia

The “United Nations Complementarity Framework for Living Well in Bolivia 2018-2022” guides the UN System’s work and provides a reference for action in the country.

The framework is an open and comprehensive approach to “Living Well”; a transformative and democratizing development model which guides the actions and priorities of the development agenda in Bolivia. In 2011 Bolivia passed the world's first laws granting all nature equal rights to humans. The Law of Mother Earth will establish 11 new rights for nature. They include: the right to life and to exist; the right to continue vital cycles and processes free from human alteration; the right to pure water and clean air; the right to balance; the right not to be polluted; and the right to not have cellular structure modified or genetically altered. Controversially, it will also enshrine the right of nature "to not be affected by mega-infrastructure and development projects that affect the balance of ecosystems and the local inhabitant communities".

Other indigenous milestones in Bolivia include improved access to equitable education, health, social protection, water, sanitation and hygiene. Similar changes have been made to guarantee food and nutritional security.

The United Nations System's interventions in Bolivia have a targeted and measurable focus on interculturality, equality and protection of the rights of Indigenous peoples... " *which have been strengthened by the implementation of gender-sensitive laws and policies that promote a life free from violence, by providing support services and resources, specifically focused on the rights of children.* "

#### **FREE PRIOR AND INFORMED CONSENT AND THE LAND**

*"Free Prior and Informed Consent recognizes indigenous peoples' inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them based on the principle of informed consent. Procedurally, free, prior and informed consent requires processes that allow and support meaningful choices by indigenous peoples about their development path"* (UN Sub-Commission on the Promotion and Protection of Human Rights 2004, p. 5).

Relevant International Agreements supporting Free Prior and Informed Consent are:

1. Charter of the United Nations (1945) – Article 1, Clause 2
2. Universal Declaration on Human Rights (1948)
3. Convention on the Prevention and Punishment of the Crime of Genocide (1948) – Article 2
4. UN Convention on the Elimination of All Forms of Racial Discrimination (1965)
5. International Covenant on Economic, Social and Cultural Rights (1966, entered into force in 1976)
6. Indigenous and Tribal Peoples Convention (International Labour Organization C169 (1989) only 20 countries have signed to date, yet it is regarded as the most important, legally binding international document about Indigenous rights.
7. World Bank Operational Directive 4.20 (1991)
8. Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities (1992)
9. Rio Declaration on Environment and Development (1992)
10. Convention on Biological Diversity (1992)
11. Vienna Declaration and Programme of Action (1993) – Article 1.28 called for the establishment of a Working Group to prepare a Declaration on the Rights of Indigenous Peoples (which was not finalized until 2007).
12. UNESCO Universal Declaration on Cultural Diversity (2001)
13. Equator Principles (2003) – A voluntary set of standards developed by several major banks for assessing and managing risks related to development projects. Indigenous peoples are considered to be a stakeholder needing to be fully considered
14. UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) – This Declaration addresses a large range of rights of Indigenous peoples. It affirms that governments should obtain 'free, prior and informed consent' from Indigenous peoples about any project that may affect their livelihoods (UN General Assembly 2007a, Articles 10, 19, 29 and 32).

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On January 27, 2021 Sandra Gogel of the Law Firm Miller Thomson wrote that:

*“Industry has willingly accepted its delegated procedural duties to engage with Indigenous peoples and has forged an industry practice of negotiating impact and benefit agreements (“IBAs”), in the absence of any legal requirement or regulatory guidance. And now, in this new era of reconciliation, it will also need to embrace UNDRIP and apply its principles, norms and standards to its core operational activities involving Indigenous peoples, their lands and resources. Re-purposing or re-thinking the IBA such that it reflects FPIC, may be one way to proactively shape industry’s response to this call to action.”*