
Assembly of First Nations

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Assemblée des Premières Nations

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**ANNUAL GENERAL ASSEMBLY
DECEMBER 8 & 9, 2020, OTTAWA, ON**

Resolution no. 10/2020

TITLE: Support for First Nations to Administer Justice

SUBJECT: Self-Governance & Justice Transformation for First Nations

MOVED BY: John Bilton, proxy, Naotkamegwaning First Nation, ON

SECONDED BY: Chief Ronald Ignace, Skeetchestn Indian Band, BC

DECISION: Carried; 2 objections; 3 abstentions

WHEREAS:

- A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:
- i. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
 - ii. Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
 - iii. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
 - iv. Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

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PERRY BELLEGARDE, NATIONAL CHIEF

10 – 2020
Page 1 of 4

- v. Article 38: States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.
 - vi. Article 39: Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.
- B. *The Truth and Reconciliation Commission of Canada: Calls to Action* states:
- i. 42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.
 - ii. 45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal Peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara 1764, and reaffirm the nation-to-nation relationship between Aboriginal Peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:
 - i. (iv.) Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.
- C. The Assembly of First Nations (AFN) Resolution 87/2019, *Support a Process for Implementation of International Treaties*, reaffirms that Treaty and Non-Treaty First Nations in Canada have never renounced their sovereign attributes, including the inherent right to self-determination and related governance structures.
- D. The Ontario Court of Justice decision of Mr. Justice David M. Gibson in Kenora on October 2, 2020, in *R. v. Sherry Turtle, Audrey Turtle, Loretta Turtle, Rocelyn Moose, Cherilee Turtle, Tracy Strang (R. v. Turtle et al.)*, exposed the Crown's failure to honour the sacred Treaty relationship and its obligations with Treaty No. 5 signatory Pikangikum First Nation, the related corrosive effects of colonization, and the historical and ongoing harms perpetuated by the non-Indigenous justice systems on the First Nation. The Court concluded that it is also in the best interests of the Crown to consult meaningfully with the First Nation in respect of repairing the Treaty relationship in the domain of justice administration.

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- E. In reference to the decision in *R. v. Turtle et al.*, a letter was sent by Chief Dean Owen of Pikangikum First Nation on October 20, 2020, to the Attorneys General of Canada and Ontario, the Federal Minister of Crown-Indigenous Relations, and the member of the Provincial Legislature for the District of Kenora, Ontario calling on the Crown to act immediately to repair the sacred Treaty relationship and to consult deeply with the First Nation on a nation-to-nation basis about exercising its right to administer justice in accordance with its laws and traditions.
- F. Referring to the decision in *R. v. Turtle et al.*, the Grand Council Treaty #3 (GCT#3) Resolution (dated October 15, 2020), *Support for the GCT #3 Initiative to Have First Nations of Treaty #3 Administer Their Rights on Their Treaty Lands*, directs the Ogichidaa (Grand Chief) to meet with the federal and provincial governments to address the treaty right to self-determination and the legitimacy of Indigenous jurisdiction to administer Anishinaabe laws on Treaty land.
- G. In reference to the decision in *R. v. Turtle et al.*, the Nishnawbe-Aski Nation (NAN) Resolution 20/14 (dated October 21, 2020), *Justice and Law Transformation in NAN Territory* indicates: the Chiefs-in-Assembly collectively and individually assert the right to self-determination, call for the implementation of a justice system in NAN First Nations territory inclusive of Indigenous history, culture, values and traditions; and in support of this mandate direct the NAN Executive Council to begin work immediately in respect of transforming the system of justice in NAN First Nations territory, including maintaining channels of communication with the federal and provincial governments in furtherance of the sacred Treaty relationship.
- H. The non-Indigenous justice systems in Canada continue to have devastating and long-lasting impacts on First Nations peoples, including but not limited to the staggering overrepresentation of Indigenous men, women and youth in Canadian jails, the grossly disproportionate numbers of Indigenous child apprehension and related family fragmentation, the high rates of Indigenous female victimization, the shocking Indigenous youth suicide rate as well as related substance addiction and mental health issues. There is an urgent need to end the perpetuation of these appalling and disturbing outcomes and any solution must substantially involve transforming systems of justice for Indigenous Peoples in Canada to those demonstrative of First Nations self-governance.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Declare support for all First Nations, such as Pikangikum First Nation, Grand Council Treaty #3 First Nations and Nishnawbe Aski Nation First Nations to administer justice in relation to their respective peoples and territories in accordance with their Inherent Title and Rights and Treaty Rights and Relationships; ensuring overlapping rights, claims and territory are taken in to account.

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2. Declare support for all First Nations in exercising their sovereign rights to self- determination, including the implementation, enforcement and direction of culturally relevant justice systems in relation to their respective peoples.
3. Urge the Government of Canada to acknowledge that the imposed application of non- Indigenous justice systems on First Nations is an extension of colonization that has been and continues to be an evident catastrophe.
4. Urge the Government of Canada to honour the sacred relationships with First Nations, recognize the legitimacy of the sovereignty of First Nations to administer justice in respect of their peoples, and consult deeply with them.
5. Urge the Government of Canada to establish and maintain channels of communication with First Nations in furtherance of recognizing the sovereign Indigenous jurisdiction to administer justice in respect of their peoples.
6. Urge the Government of Canada, in accordance with Articles 4 and 39 of the United Nations Declaration on the Rights of Indigenous Peoples, to provide financial and technical assistance to all First Nations in support of their respective administrations of justice.
7. Declare that self-government or modern treaty agreements do not supersede the inherent, rights, title and jurisdiction of any other First Nation.

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