

March 18, 2010

Canada's endorsement of the *UN Declaration* must be consistent with human rights

Indigenous Peoples and human rights and faith based organizations welcome the announcement in the Speech from the Throne that the Canadian government is taking steps to endorse the *United Nations Declaration on the Rights of Indigenous Peoples*. We urge the government to embrace this vital human rights instrument without conditions or limitations.

The *Declaration* was overwhelmingly adopted by the UN General Assembly on September 13, 2007. At that time only Canada, Australia, New Zealand and the United States voted against the *Declaration*. Australia has since reversed its position, and NZ and the US have indicated their positions are under review. We applaud Canada's decision to join the growing global consensus of support for the *Declaration*.

The *Declaration* provides a principled and normative framework for partnership and reconciliation between states and Indigenous Peoples. Its adoption was heralded around the world by Indigenous Peoples, states, human rights organizations and the United Nations. Its provisions provide much needed guidance to governments, state institutions and society as a whole on how human rights laws and obligations can be best understood and applied to the distinct circumstances and the urgent needs of 370 million Indigenous People around the world.

We are concerned, however, as to what is intended by the government of Canada in stating that it will take steps to endorse the *Declaration* "in a manner fully consistent with Canada's Constitution and laws". In previously opposing the *Declaration*, the government had claimed that there were unspecified and unsubstantiated incompatibilities between the *Declaration* and the Canadian Constitution. As affirmed in an open letter from more than 100 experts on Constitutional and international law aspects relating to Aboriginal rights in Canada, there is no contradiction between the Canadian Constitution and the *Declaration*.

Furthermore, human rights standards cannot merely condone or sustain the current practices and preferences of states, whether or not those practices and preferences are expressed in domestic law. To limit UN declarations in this way would defeat the purpose of having international standards, which are meant to inspire and guide improved protection for human rights, not simply reinforce the status quo.

To require the provisions of the *Declaration* to be interpreted in accordance with the constitution and laws of each state could serve to legitimize any existing injustices and discrimination in domestic situations. It would also undermine the principle of "universality" that applies to all human rights.

Human rights are generally relative in nature so that the human rights of all are respected. The *Declaration* reflects and builds upon international human rights standards. It does not exist in a vacuum and allows for full consideration of relevant international and domestic law.

In interpreting human rights and related state obligations, domestic courts may choose to consider declarations and other international instruments. Such dynamic interaction between domestic and international law is well-established in Canada.

The *Declaration* is a living instrument that is broadly supported and has universal application. It provides a crucial context and framework towards ensuring justice, as well as the dignity, security and well-being of Indigenous Peoples worldwide.

We encourage the government of Canada to work with Indigenous Peoples on a respectful process for the endorsement and implementation of the *Declaration*. We believe the statement announcing this change in position must be developed in genuine partnership, and in a way that honours the spirit and intent of the *Declaration*. Many Indigenous leaders in Canada were involved in the *Declaration*'s 20 plus years of development in the UN system and have much knowledge, insight and experience to share. We look forward to this happening in a timely manner and are prepared to assist in any way.

Assembly of First Nations

Assemblée des Premières nations du Québec et du Labrador

Amnesty International Canada

Amnistie internationale Canada francophone

Canadian Friends Service Committee (Quakers)

Chantier de l'économie sociale

Chiefs of Ontario

Confédération des Syndicats Nationaux - CSN

Conseil central du Montréal métropolitain – CSN

Fédération des femmes du Québec

First Nations Summit

Front d'action populaire en réaménagement urbain - FRAPRU

Grand Council of the Crees (Eeyou Istchee)

Inuit Circumpolar Council (Canada)

Inuit Tapiriit Kanatami

KAIROS: Canadian Ecumenical Justice Initiatives

Ligue des droits et libertés

Native Women's Association of Canada

Quebec Native Women / Femmes autochtones du Québec

Regroupement des centres d'amitié autochtones du Québec

Union of BC Indian Chiefs