

May 1, 2008
Open Letter

UN Declaration on the Rights of Indigenous Peoples
Canada Needs to Implement This New Human Rights Instrument

On September 13, 2007, the United Nations General Assembly adopted the *UN Declaration on the Rights of Indigenous Peoples* by an overwhelming vote of 144-4. The UN Secretary-General, other prominent international leaders, and human rights experts hailed this historic event as a victory for the human rights of the world's most disadvantaged and victimized peoples.

There are over 370 million Indigenous people worldwide. Indigenous peoples urgently require international affirmation and protection of their human rights. Their rights are routinely trampled by national governments, even when these rights are entrenched in law.

Canada was one of only four states that opposed the *Declaration*. Government ministers characterize the *Declaration* as incompatible with Canada's Constitution and the Canadian Charter of Rights and Freedoms. They state that the *Declaration* affirms only the collective rights of Indigenous peoples and fails to balance individual and collective rights or the rights of Indigenous and non-Indigenous peoples. No credible legal rationale has been provided to substantiate these extraordinary and erroneous claims.

We, the undersigned, have researched and worked in the fields of Indigenous rights and/or constitutional law in Canada. We are concerned that the misleading claims made by the Canadian government continue to be used to justify opposition, as well as impede international cooperation and implementation of this human rights instrument.

The *Declaration* contains some of the most comprehensive balancing provisions that exist in any international human rights instrument. Article 46 of the *UN Declaration* states that every provision must be interpreted "in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith". These are the core principles and values of not only Canada's Constitution, but also the international system that Canada has championed.

Further, seventeen provisions in the *Declaration* address individual rights. The *UN Declaration* also states that the rights of Indigenous peoples may be limited when strictly necessary "for the purpose of securing due recognition and respect for the rights and freedoms of others". This approach allows for both flexibility and balance.

In response to Canada's position, the UN High Commissioner for Human Rights and former Supreme Court of Canada Justice, Louise Arbour, publicly expressed her "astonishment" and "profound disappointment". The Declaration provides a principled

framework that promotes a vision of justice and reconciliation. In our considered opinion, it is consistent with the Canadian Constitution and Charter and is profoundly important for fulfilling their promise. Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations.

As a member of the UN Human Rights Council, Canada has a duty to “uphold the highest standards” of human rights for all. This mandate is guided by principles of impartiality, objectivity and non-selectivity. Elimination of politicization of human rights is a vital objective. For Canada to act otherwise is prejudicial to Indigenous peoples’ human rights. It undermines Canada’s credibility and international role.

September 13, 2007 was a shameful day for Canada but a tremendous achievement for the world’s Indigenous peoples and the international system. It is time for the government of Canada to cease publicizing its misleading claims and, together with Indigenous peoples, actively implement this new human rights instrument.

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