

United Nations Declaration on the Rights of Indigenous Peoples Factsheet on Canada's commitment to endorse the *Declaration*

"A growing number of states have given qualified recognition to the *United Nations Declaration on the Rights of Indigenous Peoples*. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws." – Speech from the Throne, 3 March 2010.

The time is now for Canada to join the overwhelming majority of states that have endorsed the *UN Declaration* and who are establishing a practice of implementing this *Declaration* as an important international legal instrument.

What is the *UN Declaration on the Rights of Indigenous Peoples*?

1. The *UN Declaration on the Rights of Indigenous Peoples* is an international human rights instrument adopted by the UN General Assembly on 13 September 2007. It is much more than an "aspirational" instrument.

2. The *UN Declaration* elaborates on Indigenous peoples' inherent rights. It does not create new rights.

3. In its preamble the *UN Declaration* is described as "a standard of achievement to be pursued in a spirit of partnership and respect." Indeed, it reinforces the Treaty relationships that exist between Indigenous peoples and the Crown and which form "the basis for a strengthened partnership... [preamble]." The *Declaration* also states that the rights it contains "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world [Article 43]."

4. In his role as UN Special Rapporteur on the rights of indigenous peoples, James Anaya has said that,

"The standards affirmed in the Declaration share an essentially remedial character,

seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights."

5. Like other international human rights declarations, the *UN Declaration on the Rights of Indigenous Peoples* provides an authoritative source of guidance for all institutions of society.

6. Declarations in themselves are not legally binding in the same manner as treaties, but they can have legal effect. They may reflect existing rights in treaties. They may also be declaratory of existing customary international law.

7. Courts are free to rely on declarations in interpreting human rights – as are Indigenous and non-Indigenous governments and human rights commissions. UN treaty bodies are increasingly using the *UN Declaration* in interpreting Indigenous human rights.

8. Unlike conventions, declarations do not need to be signed or ratified. They are considered universally applicable from the time of their adoption.

9. In a May 2008 open letter, 100 Canadian legal scholars and other experts on matters of law and Indigenous rights, stated that not only is the *UN Declaration* "consistent with the Canadian Constitution and Charter," it is also "profoundly important for fulfilling their promise."

This factsheet was endorsed by Amnesty International Canada, Canadian Friends Service Committee (Quakers), Chiefs of Ontario, First Nations Summit, Grand Council of the Crees (Eeyou Istchee), Inuit Circumpolar Council (Canada), International Organization of Indigenous Resource Development, Indigenous World Association, Innu Council of Nitassinan, KAIROS: Canadian Ecumenical Justice Initiatives, Native Women's Association of Canada, Quebec Native Women / Femmes autochtones du Québec, Union of British Columbia Indian Chiefs, Ermineskin Cree Nation, Louis Bull Cree Nation, Montana Cree Nation, Samson Cree Nation

Canada and the *UN Declaration*

10. Canadian government representatives played an important, supportive role in the final years of the negotiation of the *UN Declaration*. According to documents obtained through an access to information request, senior bureaucrats who reviewed the *Declaration* recommended that the government support its adoption by the United Nations.

11. In June 2006, Canada and Russia were the only states to vote against the *Declaration* when it was adopted by the UN Human Rights Council. Lobbying by Canada and its few allies contributed to a delay in consideration of the *Declaration* by the UN General Assembly. In September 2007, Canada, the US, Australia and New Zealand were the only states to vote against the *Declaration* at the General Assembly.

12. Australia and New Zealand have since formally endorsed the *Declaration*, while the US is holding consultations with Indigenous peoples concerning possible endorsement.

13. The Canadian government has offered a number of rationales for its opposition to the *Declaration*. All these rationales, like the claim that the *Declaration* contradicts Canada's Constitution, rely on inaccurate and unsubstantiated interpretations of the *Declaration's* provisions. *Declarations* are intended to be interpreted in the context of the extensive body of human rights protections under international law. Furthermore, the *Declaration* contains extensive, explicit balancing provisions: more than any other international human rights instrument. Canadian officials helped draft many of these provisions.

Endorsement and Implementation

14. Canadian government opposition to the *Declaration* does not affect its legal status in Canada. Whether or not the government endorses the *Declaration*, and regardless of the language it uses to do so, Canadian institutions can and should use the *Declaration* as a key tool in interpreting and upholding the rights of Indigenous peoples.

15. While Indigenous peoples and human rights groups have urged Canada to endorse the *Declaration*, these groups have also firmly rejected the notion of a qualified or conditional endorsement as implied by the Speech from the Throne and subsequent government statements.

16. International human rights standards are vital tools in promotion of rights that states have failed to uphold. They are intended to help guide the reform of laws and policies. There is an inherent contradiction in the notion of supporting an international human rights instrument only to the extent that it is consistent with current national laws and policies.

Canada's Contradictory Conduct

17. While promising to take steps toward endorsement of the *UN Declaration*, the Canadian government has continued its attempts to obstruct use of this human rights instrument or weaken its standards both in Canada and internationally.

18. In May 2010, government lawyers tried to persuade the Canadian Human Rights Tribunal that it should not use the *Declaration* as a source of interpretation of Indigenous rights in a case concerning the discriminatory underfunding of First Nations children's services.

19. In September, Canadian representatives at the UN Human Rights Council attempted to obstruct passage of resolutions to renew the mandates of two important UN mechanisms for Indigenous rights. Canada sought changes in the texts to reflect Canada's unsupportable position that the collective rights of Indigenous peoples, such as the rights affirmed in the *UN Declaration*, are not actually human rights.

Next Steps

20. Our organizations have called on Canada to endorse the *UN Declaration* without qualifications or restrictions and to commit to working with Indigenous peoples to ensure its full implementation. Nothing less is required to demonstrate leadership and commitment to human rights and equality for all peoples and individuals.