

November 14, 2011

Open Letter to the Government of Canada on the Anniversary of Canada's Endorsement of the UN Declaration on the Rights of Indigenous Peoples – Need for an Honourable Approach

As organizations concerned for the human rights and well-being of Indigenous peoples, we are calling on the Government of Canada to honour the standards in the UN Declaration on the Rights of Indigenous Peoples, which Canada formally endorsed one year ago, on November 12, 2010.

While it is not binding in the same manner as international treaties, the Declaration does have diverse legal effects. The UN Declaration provides a principled and universal framework for Indigenous and non-Indigenous peoples to work together in promoting human rights and ending discrimination and injustice.

The need is great.

Around the world Indigenous peoples are consistently among the most marginalized and victimized peoples. While most people in Canada enjoy a quality of life that is the envy of the world, many Indigenous communities are faced with inadequate and overcrowded housing, unsafe drinking water, and sub-standard schools.

Last May, in her final speech as Auditor General, Sheila Fraser noted her department had produced 31 audits documenting the fact that Indigenous peoples lack access to services that “other Canadians take for granted.” Such disparities are incompatible with the constitutional commitment of federal and provincial legislatures and governments to provide “essential public services of reasonable quality” to all.

Our organizations have repeatedly urged the Government of Canada to use the UN Declaration as the basis for re-building relationships with Indigenous peoples. Critical actions needed to live up to the standards affirmed by the UN Declaration include:

- Making the recognition and protection of Indigenous peoples' collective rights to lands and resources an explicit objective of federal policies.
- Institutionalizing decision-making processes consistent with the constitutional duty of Aboriginal consultation, accommodation and consent, as affirmed by the Supreme Court of Canada.
- Eliminating discrimination in the provision of government services to Indigenous people and communities.
- Establishing a comprehensive national plan of action to address the issues of violence against, and disappearance and murder of, Indigenous women and girls in Canada and ensure that they enjoy the full protection of the law.

The unilateral imposition of legislation against the will of Indigenous peoples must be left in the colonial past.

In the UN Secretary-General's July 2010 report to the General Assembly all states are called upon to "establish national legislative frameworks for indigenous peoples' rights, individual as well as collective, and to develop institutional policies and mechanisms so as to engage effectively on indigenous peoples' issues, taking as a point of reference the provisions of the United Nations Declaration on the Rights of Indigenous Peoples."

Around the world, many governments and institutions are doing just that. They are implementing the UN Declaration in both policy and legislation to address Indigenous rights and critical concerns.

- In June 2009, Greenland achieved significantly enhanced self-government. As described by the Premier of Greenland Kuupik Kleist, "this new development in Greenland and in the relationship between Denmark and Greenland should be seen as a de facto implementation of the Declaration and, in this regard, hopefully an inspiration to others".
- In November 2007, only two months after the UN General Assembly adopted the Declaration, the Government of Bolivia passed legislation making the Declaration part of national law. In February 2009, the Declaration was incorporated into the Bolivia's new Constitution.
- In February 2011, the Republic of the Congo adopted new legislation to uphold the provisions of the UN Declaration, including recognition of Indigenous land and resource rights and the state duty to ensure recognition and protection of Indigenous title.
- In November 2009, the International Fund for Agricultural Development adopted a new policy framework for engaging with Indigenous peoples consistent with the UN Declaration. This includes a commitment that IFAD "shall support the participation of indigenous peoples' communities in determining priorities and strategies for their own development" and that projects proposed by Member States will be assessed on "whether the borrower or grant recipient consulted with the indigenous peoples to obtain their free, prior and informed consent."
- In 2010, the United Nations Food and Agriculture Organization adopted a new policy affirming "a human rights-based approach" to working with Indigenous peoples guided by the UN Declaration on the Rights of Indigenous Peoples.
- In May 2011, the International Finance Corporation (a member of the World Bank Group), adopted a policy, based on the UN Declaration, that projects with "potential significant adverse impacts on indigenous peoples" require the free, prior, and informed consent of the affected peoples.

Our organizations are deeply concerned that there are no similar examples of implementation within Canada. Rather than demonstrating global leadership in advancing this vital human rights instrument, Canada has, in fact, continued to take obstructive positions even after giving formal endorsement to the UN Declaration. For example, in a landmark Canadian Human Rights Tribunal case considering allegations of discrimination in the underfunding of First Nations child welfare, the government opposed use of the UN Declaration to interpret Canada's domestic human rights obligations.

In the context of the Convention on Biological Diversity, the government's new draft domestic policy to implement access and benefit sharing of genetic resources fails to mention the UN Declaration and Indigenous peoples' human rights. The government has repeatedly failed to consult Indigenous peoples and undermined their resource rights.

Such actions are inconsistent with Canada's obligation to uphold international human rights standards. Canada's conduct is contrary to any good faith interpretation of its official endorsement of the Declaration.

It is now one year after Canada's endorsement of the UN Declaration on the Rights of Indigenous Peoples. The government must respect and fulfill its provisions. It is time for the government to live up to its commitments and work with Indigenous peoples to fully and effectively implement this human rights instrument.

Amnesty International Canada

Assembly of First Nations of Québec and Labrador/
Assemblée des Premières Nations du Québec et du Labrador

Assembly of First Nations Regional Office (NWT)

Atlantic Policy Congress of First Nations Chiefs Secretariat

Canadian Friends Service Committee (Quakers)

Chiefs of Ontario

Dene Nation

First Nations Child and Family Caring Society of Canada

First Nations Summit

Four Nations - Maskwacis Cree

Grand Council of the Crees (Eeyou Istchee)

Haudenosaunee of Kanehsatà:ke

IKANAWTIKET

Indigenous World Association

Innu Council of Nitassinan

Maritime Aboriginal Peoples Council

Native Women's Association of Canada

Nishnawbe Aski Nation

Union of British Columbia Indian Chiefs