

**Committee on the Elimination of Racial Discrimination  
80th Session  
13 February - 9 March 2012  
United Nations, Geneva**

**Response to Canada's 19th and 20th Periodic Reports:  
Alternative Report on Canada's Actions on the  
*UN Declaration on the Rights of Indigenous Peoples***

**Joint Report by the Grand Council of the Crees (Eeyou Istchee); Canadian Friends Service Committee (Quakers); Assembly of First Nations; Nunavut Tunngavik Inc.; First Nations Child and Family Caring Society of Canada; National Association of Friendship Centres; Union of British Columbia Indian Chiefs; BC Assembly of First Nations; First Nations Summit; International Indian Treaty Council; Hul'qumi'num Treaty Group; Treaty 4 First Nations; Yukon Aboriginal Women's Council; Chiefs of Ontario; Nishnawbe Aski Nation; Innu Council of Nitassinan; Haudenosaunee of Kaneshatà:ke; Maritime Aboriginal Peoples Council; IKANAWTIKET; Indigenous World Association; First Peoples Human Rights Coalition; KAIROS: Canadian Ecumenical Justice Initiatives**

**January 2012**

## EXECUTIVE SUMMARY

In its concluding observations in 2007, the Committee on the Elimination of Racial Discrimination urged Canada to “support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples”.

Canada did not implement that recommendation and voted against the *Declaration* at the General Assembly. In November 2010 Canada finally endorsed the *Declaration*. However, Canada has not fundamentally changed its positions and continues to devalue this human rights instrument both domestically and internationally, affecting a wide range of Indigenous peoples’ rights.

UN treaty bodies are increasingly using the *Declaration* to interpret Indigenous rights and State obligations in existing human rights treaties. In contrast, Canada claims that the *Declaration* is merely an “aspirational” instrument and does not reflect customary international law. The Special Rapporteur on the rights of indigenous peoples has called this “a manifestly untenable position”.

Canada continues to claim that: “the Declaration does not change Canadian laws. It represents an expression of political, not legal, commitment. Canadian laws define the bounds of Canada’s engagement with the Declaration.”

### **It is recommended that Canada:**

- **End its actions to devalue the *UN Declaration on the Rights of Indigenous Peoples*;**
- **Ensure its laws and policies are consistent with the *Declaration*, Indigenous peoples' human rights and Canada's related obligations;**
- **Establish a process, in conjunction with Indigenous peoples in Canada, to ensure the effective implementation of the *Declaration* domestically and internationally.**

## **Alternative Report on Canada's Actions on the *United Nations Declaration on the Rights of Indigenous Peoples***

1. In its concluding observations in 2007, the Committee on the Elimination of Racial Discrimination (CERD) expressed the following concern relating to Canada's change in position on and opposition to the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP):

In view of the positive contributions made and the support given by the State party in the process leading up to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee regrets the change in the position of the State party in the Human Rights Council and the General Assembly.<sup>1</sup>

2. CERD urged Canada to "support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples".<sup>2</sup>
3. Canada did not implement that recommendation and voted against UNDRIP in September 2007 at the General Assembly. In November 2010 Canada finally endorsed UNDRIP.<sup>3</sup> However, Canada has not fundamentally changed its positions and continues to devalue this human rights instrument.

### **Significance of UNDRIP**

4. The global consensus in support of UNDRIP reinforces its weight as a universal human rights instrument.<sup>4</sup> The widespread human rights violations against Indigenous peoples worldwide underline the urgency of realizing full and effective implementation of the *Declaration*.
5. UNDRIP is an instrument for justice and reconciliation.<sup>5</sup> As affirmed by Canada's highest court, reconciliation is an ongoing process flowing from Indigenous peoples' rights guaranteed by Canada's Constitution and from the Crown's "duty of honourable dealing":

Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the *Constitution Act, 1982*. This process of reconciliation flows from the Crown's duty of honourable dealing toward Aboriginal peoples ...<sup>6</sup>

6. The Office of the UN High Commissioner for Human Rights emphasizes that the "*Declaration* is now among the most widely accepted UN human rights instruments. It is the most comprehensive statement addressing the human rights of indigenous peoples to date, establishing collective rights and minimum standards on survival, dignity, and wellbeing to a greater extent than any other international text."<sup>7</sup>

7. The *UN Declaration on the Rights of Indigenous Peoples* has diverse legal effects and commands "utmost respect".<sup>8</sup> UN treaty bodies are increasingly using it to interpret Indigenous rights and State obligations in existing human rights treaties, as well as encouraging its implementation.<sup>9</sup> In contrast to this global assessment, Canada's claims that UNDRIP is merely an "aspirational" instrument.
8. Canadian courts are free to rely on UNDRIP when interpreting Indigenous peoples' human rights. The Supreme Court of Canada has confirmed that, declarations and other international instruments and norms are "relevant and persuasive" sources for interpreting human rights in Canada:

The various sources of human rights law – declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms – must, in my opinion, be relevant and persuasive sources for interpretation of the [*Canadian*] *Charter's* provisions.<sup>10</sup>

### **Actions to Undermine UNDRIP**

9. Internationally and domestically Canada has relentlessly taken steps to undermine UNDRIP in a diverse range of forums.<sup>11</sup> Such actions began in 2006. They continued after the announcement in the Speech from the Throne<sup>12</sup> in March 2010 that Canada would take steps to endorse UNDRIP - and after Canada's endorsement in November 2010.
10. Many of these actions took place during the 3-year period that Canada was a member of the Human Rights Council – where Canada had a duty to "uphold the highest standards in the promotion and protection of human rights ... [and] fully cooperate with the Council".<sup>13</sup> Canada was the only Council member to vote against UNDRIP at the UN General Assembly.
11. As the first President of the Human Rights Council later described: "since ... Council's adoption of the declaration, states such as Canada and New Zealand had threatened to use the Third Committee of the UNGA to block its adoption."<sup>14</sup>
12. In 2006-2007, Canada actively joined with or lobbied States with abusive human rights records or hard-line positions against UNDRIP. As emphasized by Amnesty International (Canada):

... Canada was at the forefront of urging the UN to undertake wholesale renegotiation of key provisions of the Declaration, a process that would have greatly delayed adoption and would likely have resulted in a greatly weakened text. In doing so, Canada aligned itself with states with poor records of supporting the UN human rights system and with histories of brutal repression of Indigenous rights advocates.<sup>15</sup>

13. In May 2007, the African Group of States submitted an initial proposal calling for 33 amendments to UNDRIP. This proposal was criticized by Indigenous peoples as being highly discriminatory.<sup>16</sup> Yet Canada and its few allies sent a letter to the President of the General Assembly indicating “the amended text put forward by the Africa Group helpfully provide[s] a good basis for discussions.”<sup>17</sup>
14. A month after the General Assembly's adoption of UNDRIP, Canada opposed the use of this human rights instrument “as an international standard” at the Convention on Biological Diversity.<sup>18</sup> During the years of discussion and negotiation leading up to the adoption of the *Nagoya Protocol*, Canada repeatedly expressed its opposition to UNDRIP.<sup>19</sup>
15. Within the Organization of American States (OAS), Canada unsuccessfully opposed in November 2007 the use of UNDRIP as “the baseline for negotiations and ... a minimum standard” for the draft American Declaration on the Rights of Indigenous Peoples.<sup>20</sup> As a result, Canada formally withdrew from active participation in the negotiations.<sup>21</sup>
16. As underlined by the Indigenous Peoples’ Caucus of the Americas on April 15, 2008:
 

Canada is seeking to create a dangerous precedent within the Organization of American States. That is, any State that chooses to oppose the adoption of any declaration within the Inter-American system could simply opt to oppose it and prevent its domestic application. This would severely undermine the principle of international cooperation that is a crucial element of the *UN Charter* and the *OAS Charter*. It would also undermine the progressive development of human rights within the Hemisphere.<sup>22</sup>
17. On April 8, 2008 Canada’s House of Commons adopted a resolution to “endorse” the *Declaration* and calling on Parliament and the Government of Canada to “fully implement the standards contained therein.”<sup>23</sup> In adopting this resolution, the House of Commons rejected positions expressed by the then minority government at home and abroad. Unfortunately, the current government continues to ignore the democratic will of Parliament.
18. In an Open Letter released May 1, 2008 more than 100 legal scholars and experts asserted that there is no legal barrier to prevent Canada from moving ahead with implementation of the *UN Declaration*.<sup>24</sup> The expert letter states:

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.

19. These scholars and experts add: “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.”
20. At the December 2008 world meeting on climate change in Posnań, Poland,<sup>25</sup> it is reported that Canada, Australia, New Zealand and the United States spearheaded the removal of any references to the term “rights” in relation to Indigenous peoples or to UNDRIP.<sup>26</sup> In a press conference in Poland, Canada’s Environment Minister stated that the UNDRIP “has nothing whatsoever to do with climate change”.<sup>27</sup>
21. Indigenous peoples’ and human rights organizations had strongly encouraged Canada to make an unqualified endorsement.<sup>28</sup> The government did not engage with Indigenous peoples in any substantive manner prior to the endorsement. In its endorsement, Canada sought to limit the application of UNDRIP to the extent it is "fully consistent with Canada's Constitution and laws".
22. Human rights standards cannot merely condone or sustain the current laws, practices and preferences of States. 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*.
23. Canada has never before placed blanket qualifications on its support for international human rights instruments. Imposing such limitation on the *Declaration* constitutes a discriminatory double standard. It also runs counter to the approach of Canada's highest court.<sup>29</sup>
24. Canada has repeatedly stated that UNDRIP does not reflect customary international law. The Special Rapporteur on the rights of Indigenous peoples has responded directly to Canada on this point, indicating its position is "misplaced":

... the Government’s statement that the Declaration's provisions “do not reflect customary international law” is misplaced ... because it is based on a failure to appreciate the relation between the Declaration and widely accepted human rights principles that are undoubtedly parts of customary international law as well as treaty-based law, such as fundamental principles of non-discrimination, self-determination, cultural integrity and property.<sup>30</sup>

25. The Special Rapporteur concluded that Canada's position that UNDRIP does not reflect any customary international law was "manifestly untenable":

It is one thing to argue that not all of the Declaration's provisions reflect customary international law, which may be a reasonable position. It is quite another thing to sustain that none of them does, a manifestly untenable position. The question is not whether the Declaration in its entirety reflects customary international law, but rather which of its provisions do so and to

what extent. In the view of the Special Rapporteur, a number of the provisions of the Declaration reflect customary international law ...<sup>31</sup>

26. To date, there are no signs that positions within the government have fundamentally changed. The government has qualified its support in an attempt to minimize the effects of UNDRIP.<sup>32</sup> In a human rights complaint alleging Canadian government discrimination in funding child welfare services for First Nations children on reserves, Canada claimed, “the Declaration does not change Canadian laws. It represents an expression of political, not legal, commitment. Canadian laws define the bounds of Canada’s engagement with the Declaration”.<sup>33</sup>
27. Despite repeated warnings from Canada's Auditor General<sup>34</sup> and the constitutional commitments of federal and provincial legislatures and governments,<sup>35</sup> **Canada continues to discriminate in providing essential services to First Nations people on reserves.**<sup>36</sup> In this context, the Canadian government ignores UNDRIP and the human rights implications of its actions.<sup>37</sup> When the Special Rapporteur on the rights of indigenous peoples issued a statement expressing concern about disparities of services in Canada,<sup>38</sup> the Canadian government characterized his statement as a "publicity stunt".<sup>39</sup>
28. In regard to environment and development issues, Canada often ignores or devalues UNDRIP. A current example is the controversial Northern Gateway pipeline,<sup>40</sup> where the government has sought to discredit Indigenous peoples and environmental organizations opposing the project.<sup>41</sup> Rather than apply UNDRIP and acknowledge diverse Indigenous environmental and human rights concerns, Canada sought to unjustly influence the review process.<sup>42</sup>
29. In March 2011, Canada released updated guidelines to federal officials on “Aboriginal Consultation and Accommodation”. These guidelines refer to UNDRIP, so as to diminish erroneously its value and legal significance:
 

On November 12, 2010 Canada issued a Statement of Support endorsing the United Nations Declaration on the Rights of Indigenous peoples (Declaration), an aspirational document, in a manner fully consistent with Canada’s Constitution and laws.... Canada has concerns with some of the principles in the Declaration and has placed on record its concerns with free, prior and informed consent when interpreted as a veto. As noted in Canada’s Statement of Support, the Declaration is a non-legally binding document that does not change Canadian laws. Therefore, it does not alter the legal duty to consult.<sup>43</sup>
30. The *Declaration* is more than aspirational. Although declarations are not the same as treaties or conventions, they do have diverse legal effects.<sup>44</sup> The *Declaration* reflects rights already found in human rights treaties. It also reflects customary international law – legal standards that have become obligatory on states through their widespread use.

31. There is an inherent contradiction in the notion of supporting an international human rights instrument only to the extent that it is consistent with a State's constitution and laws. Yet this is the position taken by the Canadian government on UNDRIP. International treaty bodies have indicated repeatedly to States that they should reform their laws and policies, so as to conform to international human rights standards.
32. In maintaining such an untenable position, Canada is not only discriminating against Indigenous peoples. It is also undermining the rule of law and the international human rights system.

**In regard to the *Declaration*, it is recommended that Canada:**

- **End its actions to devalue the *UN Declaration on the Rights of Indigenous Peoples*, consistent with the constitutional duty to uphold the honour of the Crown. Otherwise, the reconciliation required by section 35 of the *Constitution Act, 1982* will continue to be impeded;**
- **Ensure its laws and policies are consistent with UNDRIP, Indigenous peoples' human rights and Canada's related obligations;**
- **Establish a process, in conjunction with Indigenous peoples in Canada, to ensure the effective implementation of UNDRIP domestically and internationally.**

## ENDNOTES

<sup>1</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, UN Doc. CERD/C/CAN/CO/18 (25 May 2007), para. 27.

<sup>2</sup> *Ibid.*

<sup>3</sup> Canada, "Canada Endorses the United Nations Declaration on the Rights of Indigenous Peoples", 12 November 2010, <http://www.aadnc-aandc.gc.ca/eng/1292354321165>.

<sup>4</sup> African Commission on Human and Peoples' Rights, "Resolution on the protection of indigenous peoples' rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site", ACHPR/Res.197 (L)2011, done in Banjul, The Gambia, 5 November 2011, preamble, [http://www.achpr.org/english/resolutions/Resolution197\\_en.htm](http://www.achpr.org/english/resolutions/Resolution197_en.htm):

**Recalling** the United Nations Declaration on the Rights of Indigenous Peoples, a universal international human rights instrument that has attained consensus among UN Member States, and reaffirming the African Commission's commitment to fostering the values and implementing the principles enshrined in this Declaration ... [underlining added]



Office of the High Commissioner for Human Rights, "Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, as he concludes his visit to Australia" (27 August 2009),

<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/313713727C084992C125761F00443D60?opendocument>:

"The Declaration expresses the global consensus on the rights of indigenous peoples and corresponding state obligations on the basis of universal human rights."

<sup>5</sup> See, e.g., Secretary-General (Ban Ki-moon), "Protect, Promote, Endangered Languages, Secretary-General Urges in Message for International Day of World's Indigenous People", SG/SM/11715, HR/4957, OBV/711, 23 July 2008: "The Declaration is a visionary step towards addressing the human rights of indigenous peoples. It sets out a framework on which States can build or rebuild their relationships with indigenous peoples. ... [I]t provides a momentous opportunity for States and indigenous peoples to strengthen their relationships, promote reconciliation and ensure that the past is not repeated." [emphasis added]

Canada, Statement by The Honourable John Duncan on The Occasion of The International Day of the World's Indigenous People, August 9, 2011, <http://www.aadnc-aandc.gc.ca/eng/1314712950489>: "The November 12, 2010, endorsement of the United Nations Declaration on the Rights of Indigenous Peoples reinforces our government's commitment to reconciliation and strengthening our relationship with Aboriginal peoples in Canada." [emphasis added]

<sup>6</sup> *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 32.

<sup>7</sup> Office of the High Commissioner for Human Rights, "Indigenous rights declaration universally endorsed", 2010, online: <http://www.ohchr.org/EN/NewsEvents/Pages/Indigenousrightsdeclarationendorsed.aspx>

<sup>8</sup> General Assembly, *Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General*, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/65/264 (9 August 2010), para. 63: "Implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification."

International Law Association, "Rights of Indigenous Peoples", Interim Report, The Hague Conference (2010), <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>, para. 5: "UNDRIP is ... a declaration deserving of utmost respect. This is confirmed by the words used in the first preambular paragraph of the Declaration, according to which, in adopting it, the General Assembly was '[g]uided by the purposes and principles of the Charter of the United Nations, and good faith in the *fulfilment of the obligations assumed by States in accordance with the Charter*'; this text clearly implies that respect of the UNDRIP represents an essential prerequisite in order for States to comply with some of the obligations provided for by the UN Charter." [underlining added]

<sup>9</sup> See, e.g., Committee on the Rights of the Child, *Concluding observations: Cameroon*, UN Doc. CRC/C/CMR/CO/2 (29 January 2010), para.83; Committee on the Rights of the Child, *Indigenous children and their rights under the Convention*, General Comment No. 11, UN Doc. CRC/C/GC/11 (30 January 2009), para. 82; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, UN Doc. CERD/C/GTM/CO/12-13 (19 May 2010), para. 11; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Japan*, UN Doc. CERD/C/JPN/CO/3-6 (6 April 2010), para. 20; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Cameroon*, UN Doc. CERD/C/CMR/CO/15-18 (30 March 2010), para. 15; Committee on the Elimination of Racial Discrimination (Chairperson), Letter to Lao People's Democratic Republic, 12 March 2010 (Early warning and urgent action procedure) at 1; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Peru*, UN Doc. CERD/C/PER/CO/14-17 (3 September 2009), para. 11; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/SUR/CO/12 (13 March 2009), para. 17; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Brazil*,

---

UN Doc. E/C.12/BRA/CO/2 (12 June 2009), para. 9; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Nicaragua*, UN Doc. E/C.12/NIC/CO/4 (28 November 2008), para. 35; and Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc. CEDAW/C/AUS/CO/7 (30 July 2010), para. 12.

<sup>10</sup> *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313, at 348, per Dickson C.J. (dissenting on other grounds). See also *R. v. Sharpe*, [2001] 1 S.C.R. 45, at paras. 175, 178 (citing United Nations Declaration of the Rights of the Child, G.A. Res. 1386 (XIV) (1959)).

<sup>11</sup> See generally Paul Joffe, “UN Declaration on the Rights of Indigenous Peoples: Canadian Government Positions Incompatible with Genuine Reconciliation”, (2010) 26 N.J.C.L. 121, <http://quakerservice.ca/wp-content/uploads/2011/05/NJCLPJArticleUNDeclaration2010.pdf>.

<sup>12</sup> Canada (Governor General), *A Stronger Canada. A Stronger Economy. Now and for the Future*. Speech from the Throne, 3 March 2010 at 19: “Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada’s Constitution and laws.”

<sup>13</sup> General Assembly, *Human Rights Council*, UN Doc. A/RES/60/251 (15 March 2006), para. 9.

<sup>14</sup> Luis Alfonso De Alba, “The Human Rights Council’s Adoption of the United Nations Declaration on the Rights of Indigenous Peoples” in Claire Charters and Rodolfo Stavenhagen, eds., *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Copenhagen: IWGIA, 2009) 108, [http://www.iwgia.org/iwgia\\_files\\_publications\\_files/making\\_the\\_declaration\\_work.pdf](http://www.iwgia.org/iwgia_files_publications_files/making_the_declaration_work.pdf), at 125. And at 136, n. 39: “New Zealand and Canada were very active in opposing the Declaration, particularly within the African Group.”

<sup>15</sup> Amnesty International (Canada), “Canada and the International Protection of Human Rights: *An Erosion of Leadership?*, An Update to Amnesty International’s Human Rights Agenda for Canada”, December 2007, [http://www.amnesty.ca/themes/resources/hr\\_agenda\\_update\\_2007.pdf](http://www.amnesty.ca/themes/resources/hr_agenda_update_2007.pdf) at 7. [emphasis added]

<sup>16</sup> Indigenous Peoples’ Caucus, “*UN Declaration on the Rights of Indigenous Peoples*, African Group of States’ Proposed Revised Text: A Model for Discrimination and Domination” (June 2007), <http://www.converge.org.nz/pma/inipc0607.pdf>.

The initial African text would have fallen below international human rights standards and radically transformed the Declaration into an instrument that is controlled by, and subject to the arbitrary discretion of, each State. For example, the proposed revisions would have deleted affirmation of the right to self-determination; deleted protections for any future Treaties entered into with Indigenous peoples; given States the “prerogative to define who constitutes indigenous people in their respective countries or regions”; and recognized Indigenous peoples’ rights to lands, territories and resources only to the extent recognized in “provisions of national laws”.

<sup>17</sup> Letter from Australia, Canada, Colombia, Guyana, New Zealand, Russian Federation and Suriname to the President of the UN General Assembly, H.E. Sheikha Haya Rashed Al Khalifa (30 May 2007).

One month later, a similar message in favour of the African text was again conveyed. See “Non-Paper, United Nations Declaration on the Rights of Indigenous Peoples, Framework to Achieve an Irreducible Minimum of Amendments”, 28 June 2007, also submitted by Canada and the other six States to a closed meeting of the UN General Assembly: “The African Group text helpfully provides a basis and reference point for consideration of the text [of the *Declaration*].”

Ultimately, the African Group played a leadership role in reaching agreement on a revised text, which was then adopted by the General Assembly in September 2007. Canada did not support the positive initiatives of the African Group.

<sup>18</sup> Convention on Biological Diversity, *Report of the Ad Hoc Open-Ended Working Group on Access and Benefit-Sharing on the Work of its Fifth Meeting*, UNEP/CBD/WG-ABS/5/8 (15 October 2007), para. 83: "The representative of Canada requested that it be reflected in the report that his delegation objected to the use of the United Nations Declaration on the Rights of Indigenous Peoples as an international standard. The Declaration was not a legally binding instrument, had no legal effect in Canada, and its provisions did not represent customary international law."

<sup>19</sup> Grand Council of the Crees (Eeyou Istchee) *et al.*, "Response to Canada's 19th and 20th Periodic Reports: Alternative Report on Canada's Actions on the *Nagoya Protocol*", UN Committee on the Elimination of Racial Discrimination (January 2012).

<sup>20</sup> Organization of American States (Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples), *Report of the Chair on the Meetings for Reflection on the Meetings of Negotiations in the Quest for Points of Consensus (Washington, D.C., United States – November 26-28, 2007)*, OEA/Ser.K/XVI, GT/DADIN/doc.321/08 (14 January 2008), at 3: "The majority of States and all of the indigenous representatives supported the use of the UN Declaration as the baseline for negotiations and indicated that this represented a minimum standard for the OAS Declaration. Accordingly, the provisions of the OAS Declaration ha[ve] to be consistent with those set forth in the United Nations Declaration."

<sup>21</sup> Canada, "Canada's Statement to the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples: April 14, 2008", in OAS, Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples, *Report of the Chair on the Eleventh Meeting of Negotiations in the Quest for Points of Consensus (United States, Washington, D.C., April 14 to 18, 2008)*, OEA/Ser.K/XVI, GT/DADIN/doc. 339/08 (2008) at 35.

<sup>22</sup> Indigenous Peoples' Caucus of the Americas, "The Positions of Canada and the United States Expressing Reservations and Opposing Consensus are Unacceptable: Response of the Indigenous Peoples' Caucus of the Americas: April 15, 2008" in OAS, Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples, *Report of the Chair on the Eleventh Meeting of Negotiations in the Quest for Points of Consensus (United States, Washington, D.C., April 14 to 18, 2008)*, OEA/Ser.K/XVI, GT/DADIN/doc. 339/08 (2008).

<sup>23</sup> The vote was 148-113 in favour of the Motion: see *House of Commons Debates*, No. 074, (8 April 2008) 4656. The text of the Motion is contained in House of Commons, Status of Women Standing Committee, "Third Report of the Committee (United Nations Draft Declaration on the Rights of Indigenous Peoples)" Sessional Paper No. 8510-392-55 (13 February 2008).

<sup>24</sup> "UN Declaration on the Rights of Indigenous Peoples: Canada Needs to Implement This New Human Rights Instrument" (1 May 2008), online: <http://quakerservice.ca/wp-content/uploads/2011/05/UNDecl-ExpertsignonstatementMay11.pdf>

<sup>25</sup> This meeting was the 14<sup>th</sup> Conference of Parties of the United Nations Framework Convention on Climate Change (UNFCCC), opened for signature 4 June 1992, S. Treaty Doc. 102-38 (1992), 31 I.L.M. 849 (1992) (entered into force 21 March 1994).

<sup>26</sup> Victoria Tauli-Corpuz (Executive Director, TEBTEBBA and then Chair, UN Permanent Forum on Indigenous Issues), "International Human Rights Day 2008: A Sad Day for Indigenous Peoples", Press Statement (10 December 2008). The references to Indigenous peoples and the *Declaration* were removed from United Nations Framework Convention on Climate Change (Subsidiary Body for Scientific and Technological Advice (SBSTA)), "Reducing emissions from deforestation in developing countries: approaches to stimulate action: Draft conclusions proposed by the Chair", FCCC/SBSTA/2008/L.23 (10 December 2008), online: FCCC <<http://unfccc.int/resource/docs/2008/sbsta/eng/l23.pdf>>.

<sup>27</sup> Bill Curry and Martin Mittelstaedt, "Ottawa's stand at talks hurting native rights, chiefs say", *Globe and Mail* (12 December 2008) A10. Contrary to the Environment Minister's claims, Indigenous rights affirmed in

UNDRIP that are likely to be impacted by climate change include, *inter alia*: self-determination; Treaty rights; lands, territories and resources; subsistence; health; culture; environment; development; peace and security.

See also Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61 (15 January 2009) at para. 53: "The United Nations Declaration on the Rights of Indigenous Peoples sets out several rights and principles of relevance to threats posed by climate change."

<sup>28</sup> See, for example, joint letter to Prime Minister Stephen Harper, from Indigenous and human rights organizations, <http://quakerservice.ca/wp-content/uploads/2011/05/UNDecl-JointlettertoPMStephenHarper-June1810.pdf>; "Implementation of UN Declaration on the Rights of Indigenous Peoples urgently needed", joint statement of Indigenous and human rights organizations, <http://quakerservice.ca/wp-content/uploads/2011/05/UNDecl-Jointstatementfor3rdanniversary.pdf>; and joint letter to Minister of Foreign Affairs, Lawrence Cannon from Indigenous and human rights organizations, <http://quakerservice.ca/wp-content/uploads/2011/05/UNDecl-Cannon-replytoMinister-Oct5102.pdf>.

<sup>29</sup> See text accompanying note 10 *supra*.

<sup>30</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Cases examined by the Special Rapporteur (June 2009 – July 2010), UN Doc. A/HRC/15/37/Add.1 (15 September 2010), para. 112. [emphasis added]

<sup>31</sup> *Ibid.* [emphasis added]

<sup>32</sup> Amnesty International Canada et al. *Joint Statement in Response to Canada's Endorsement of the UN Declaration on the Rights of Indigenous Peoples*. November 16, 2010. [http://quakerservice.ca/wp-content/uploads/2011/05/UNDeclENDORSEMENTbyCANADAIPsandHRtsOrgsJointResponseFINALNov1610\\_0002.pdf](http://quakerservice.ca/wp-content/uploads/2011/05/UNDeclENDORSEMENTbyCANADAIPsandHRtsOrgsJointResponseFINALNov1610_0002.pdf)

<sup>33</sup> *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, Submissions by Attorney General of Canada in response to Assembly of First Nations' submissions on the endorsement by Canada of the UN Declaration on the Rights of Indigenous Peoples, December 17, 2010, Human Rights Tribunal File No. T1340/7008, para. 10. [emphasis added]

<sup>34</sup> See, e.g., Office of the Auditor General of Canada, *Status Report of the Auditor General of Canada to the House of Commons – 2011*, ch. 4 (Programs for First Nations on Reserves), [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201106\\_04\\_e\\_35372.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html) at 5: "Despite the federal government's many efforts ... we have seen a lack of progress in improving the lives and well-being of people living on reserves. Services available on reserves are often not comparable to those provided off reserves by provinces and municipalities. Conditions on reserves have remained poor. ... There needs to be stronger emphasis on achieving results." [emphasis added]

<sup>35</sup> *Constitution Act, 1982*, section 36(1):

... Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
  - (b) furthering economic development to reduce disparity in opportunities; and
  - (c) providing essential public services of reasonable quality to all Canadians.
- [emphasis added]

<sup>36</sup> See, e.g., Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari: Addendum – Mission to Canada*, UN Doc. A/HRC/10/7/Add.3 (17 February 2009), para. 72:

"Overcrowded and inadequate housing conditions, as well as difficulties accessing basic services, including water and sanitation, are major problems for Aboriginal peoples. These challenges have been identified for many years but progress has been very slow leaving entire communities in poor living conditions for decades."

<sup>37</sup> See UNDRIP, *inter alia*, arts. 2 (right to be free of discrimination); 7 (right to collective and individual security); 21 (right, without discrimination, to improvement of economic and social conditions); 22 (particular attention to rights and special needs); and 23 (right to development).

General Assembly, *2005 World Summit Outcome*, UN Doc. A/RES/60/1 (16 September 2005), adopted without vote, para. 143 (human security): "We [Heads of State and Government] stress the right of people to live in freedom and dignity, free from poverty and despair. We recognize that all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential."

<sup>38</sup> United Nations, "Special Rapporteur On Indigenous Peoples Issues Statement On The Attawapiskat First Nation In Canada, 20 December 2011", [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/F2496F6E43E46883C125796C0033DCC6?OpenDocument&cntxt=0D4FB&cookielang=en](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/F2496F6E43E46883C125796C0033DCC6?OpenDocument&cntxt=0D4FB&cookielang=en): "The social and economic situation of the Attawapiskat seems to represent the condition of many First Nation communities living on reserves throughout Canada, which is allegedly akin to third world conditions. Yet, this situation is not representative of non-Aboriginal communities in Canada, a country with overall human rights indicators scoring among the top of all countries of the world." [emphasis added]

<sup>39</sup> Kim Mackrael, "UN official blasts 'dire' conditions in Attawapiskat", *Globe and Mail* (20 December 2011), <http://www.theglobeandmail.com/news/politics/un-official-blasts-dire-conditions-in-attawapiskat/article2278146/>.

:

A spokeswoman for Aboriginal Affairs Minister John Duncan quickly fired back, characterizing the special rapporteur's missive as an attention-grabbing stunt.

"Anyone who reads the letter will see it lacks credibility," Michelle Yao wrote in an e-mail to *The Globe and Mail*. "Our government is focused on the needs of the residents of Attawapiskat – not publicity stunts." [emphasis added]

<sup>40</sup> Gerald Butts, "Our ecological treasure is the issue with Northern Gateway", *Globe and Mail* (11 January 12), <http://www.theglobeandmail.com/news/opinions/opinion/our-ecological-treasure-is-the-issue-with-northern-gateway/article2297912/>; and Nathan Vanderklippe, "Enbridge reports leak from U.S. pipeline as Northern Gateway hearings begin", *Globe and Mail* (10 January 2012), <http://www.theglobeandmail.com/report-on-business/enbridge-reports-leak-from-us-pipeline-as-northern-gateway-hearings-begin/article2298173/>.

<sup>41</sup> "Pipeline rhetoric is a radical attack on due process", *Globe and Mail*, editorial (11 January 2012), <http://www.theglobeandmail.com/news/opinions/editorials/pipeline-rhetoric-is-a-radical-attack-on-due-process/article2297894/>: "There are legitimate concerns about oil tankers and the possibility of a spill. The government should respect the process enough not to heap scorn on the participants."

Shawn McCarthy and Steven Chase, "For the Harper government, the Gateway must be open", *Globe and Mail* (11 January 2012), <http://www.theglobeandmail.com/news/politics/for-the-harper-government-the-gateway-must-be-open/article2296804/singlepage/#articlecontent>: "Environmental groups say the Harper government is engaging in diversionary tactics aimed at tarnishing the image of pipeline opponents and deflecting attention from the serious risks posed by the project."

<sup>42</sup> "Aboriginal Leaders Angered by Outright Government Support of Northern Gateway Pipeline", *Indian Country Today* (13 January 2012), <http://indiancountrytodaymedianetwork.com/2012/01/13/aboriginal-leaders-angered-by-outright-government-support-of-northern-gateway-pipeline-72312#ixzz1jSAIrGxQ>: "Grand Chief Edward John said in the chiefs' statement. 'We question how the three National Energy Board panelists, who

---

were appointed by the federal government, can fairly review this proposal when the Prime Minister and Minister of Environment openly promote what they perceive as the necessary outcome? In the end, it will be the federal government which decides on the panel's report, a decision that has apparently already been made."

<sup>43</sup> Minister of the Department of Indian Affairs and Northern Development, *Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011*, <http://www.aadnc-aandc.gc.ca/eng/1100100014664>. [emphasis added]

<sup>44</sup> Aside from international treaty monitoring bodies, domestic courts and human rights commissions can use UNDRIP to interpret Indigenous rights and related State obligations. In addition, federal, provincial, territorial and Indigenous governments can apply UNDRIP in their policy- and decision-making, as well as in enacting laws.