



United Nations Declaration on the Rights of Indigenous Peoples

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 after more than two decades of negotiations.
- 2 The *Declaration* affirms the inherent or pre-existing collective human rights of Indigenous peoples, as well as the individual human rights of Indigenous women, men and children. It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.
- 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...”
- 4 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)
- 5 In his role as UN Special Rapporteur on the rights of indigenous peoples, James Anaya concluded in 2008:

“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.”
- 6 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, including legislators and government departments, courts, human rights bodies, and public institutions such as universities.
- 7 The *Declaration* is more than aspirational. Although it is not the same as a treaty or convention, it does have diverse legal effects. The *Declaration* reflects rights already found in human rights treaties. It also reflects what is known as customary international law – legal standards that have become obligatory on states through their widespread use.
- 8 Courts are free to rely on declarations in interpreting human rights – as are Indigenous and non-Indigenous governments and human rights bodies.
- 9 Unlike conventions, declarations do not need to be signed or ratified. Declarations adopted by the General Assembly are considered universally applicable from the time of their adoption.
- 10 International human rights standards are vital in promoting rights that states have failed to uphold. Domestic laws and policies should be reformed so as to uphold such global standards.

Is the *Declaration* consistent with the Canadian Constitution and Charter of Rights and Freedoms?

- 11 In a May 2008 open letter, over 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.”

What is the Government of Canada’s position on the *Declaration*?

- 12 The federal government announced in May 2016 that it “is now a full supporter of the *Declaration*, without qualification.” This comes after the former government had opposed and campaigned against the *Declaration* for more than four years, and then issued an official statement of endorsement in November 2010.
- 13 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 was the position taken by the former Canadian government on the *UN Declaration*. International bodies have indicated repeatedly to states that they should reform their laws and policies, so as to conform to international human rights standards.
- 14 Unilateral statements made by the Government of Canada, either in association with its endorsement or made elsewhere, do not affect the legal status of the *Declaration* in Canada.
- 15 In a 2008 motion, Canada’s House of Commons called on Parliament to “fully implement” the standards in the *Declaration*.

How should the *Declaration* be implemented in Canada?

- 16 The Truth and Reconciliation Commission of Canada has stated “the *Declaration*... is the framework for reconciliation.” The central significance of the *Declaration* in the process of national reconciliation was also echoed in a statement by former UN Secretary-General Ban Ki-moon.
- 17 Courts and human rights tribunals can use the *Declaration* as a relevant and persuasive source in interpreting Indigenous human rights and related state obligations.
- 18 Indigenous peoples and their institutions are using the *Declaration* as a principled framework for advancing their rights, in their own policy- and decision-making and in their negotiations with governments and other third parties.
- 19 Civil society organizations are working cooperatively with Indigenous peoples, in

promoting and implementing their human rights and maintaining the *Declaration* as a living instrument.

- 20 Educational institutions are encouraged to include the *Declaration* in their curriculum, including in teacher training.
- 21 Corporations and investors should ensure their human rights policies and business practices fully incorporate the standards in the *Declaration*, especially that of free, prior and informed consent.
- 22 A key responsibility of government is to ensure that laws, regulations and policies are amended as necessary to bring them in line with the obligations set out in the *Declaration*. Such a legislative framework is preferable to waiting until conflicting interpretations come before the courts.

What is happening internationally?

- 23 The global consensus that now exists in support of the *Declaration* reinforces its weight as a universal human rights instrument. The ongoing and widespread human rights violations against Indigenous peoples worldwide underline the urgency of realizing full and effective implementation of the *Declaration*.
- 24 The Office of the UN High Commissioner for Human Rights emphasized in 2010 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.”
- 25 The *Declaration* is being used by UN treaty bodies to interpret Indigenous peoples’ rights and related State obligations under international treaties.
- 26 Similar use of the *Declaration* is being made by UN specialized agencies and the Human Rights Council’s special procedures and mechanisms, which include special rapporteurs and independent experts. The *Declaration* is also being relied upon by domestic and regional courts, as well as other bodies within regional human rights systems in Africa and the Americas, including the Caribbean.
- 27 In September 2014, the Outcome Document of the World Conference on Indigenous Peoples further affirmed States commitments to implementing the UN *Declaration*.