November 16, 2010

Reflections on Canada's support of the *UN Declaration on the Rights of Indigenous Peoples*

On November 12th 2010 Canada formally supported the *UN Declaration on the Rights of Indigenous Peoples*.

This is an action that Canadian Friends Service Committee (Quakers) has actively worked towards for many years, first leading up to the UN adoption of the *Declaration* in 2007, and then beyond, when Canada was one of only four states that opposed it.

Canada's endorsement of the *UN Declaration* could prove highly useful in future negotiations and litigation as an international standard to interpret Indigenous peoples' human rights. Should the United States also choose to endorse, the *Declaration* would achieve consensus worldwide. However, it is also important to reflect on the endorsement in the context of Canada's current actions towards Indigenous peoples' human rights.

The endorsement characterizes the *Declaration* as an aspirational instrument. The *Declaration* is more than aspirational. Governments, courts and other domestic and international institutions are increasingly relying on the *Declaration* to interpret Indigenous peoples' human rights and related state obligations.

If Canada means they plan to work with Indigenous peoples and aspire to the rights affirmed in the *Declaration*, good. If, however, they mean that the *Declaration* can be easily derogated from, anytime the government chooses to take a different position, this is unacceptable.

Further, in the Statement of Support the government of Canada claims, "the Declaration is a non-legally binding document that does not reflect customary international law...". This is patently false. In fact, the UN Special Rapporteur on the rights of Indigenous peoples concluded that this is a "manifestly untenable position". Provisions in the *Declaration* which reflect customary international law include the prohibition against

racial discrimination, the international principle of *pacta sunt servanda* ("treaties must be kept"), and the right of self-determination.

Last spring, in the Speech from the Throne, Canada announced its intention to endorse the *Declaration* in a manner fully consistent with Canada's Constitution and laws. The legal framework in Canada includes the Indian Act. Surely it is incomprehensible to think Canada would endorse the *Declaration* in accordance with how it relates to the Indian Act. Indigenous peoples and human rights organizations, including CFSC, reacted strongly to this language. Repeatedly the government was advised not to use such language in the endorsement.

International human rights declarations are vital tools in the promotion of rights that states have failed to uphold. This includes Canada. Declarations 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.

The actual statement of endorsement does not contain this offensive language. However, the press release released simultaneously from the department of Indian Affairs does. Which statement most accurately reflects the government's intention?

The bigger question is: do we see a real commitment from the current government of Canada to work in good faith to respect, promote and protect the human rights of Indigenous peoples? The answer to date is no. Will the endorsement change that? Only time will tell.

For the past four years Canada has aggressively undermined Indigenous peoples' human rights repeatedly both domestically and internationally. Recent examples include unacceptable actions at the UN Human Rights Council in September 2010, where Canadian officials sought to undermine procedural resolutions which renew the critical mechanisms that address the human rights of Indigenous peoples.

Domestically, Canada is currently debating Bill S-11, *Safe Drinking Water for First Nations Act*. Safe drinking water is a critical issue in Indigenous communities. However, the government is trying to use this bill to also obtain a precedent for legislative authority to "abrogate or derogate from ... aboriginal and treaty rights" through future regulations. This means that the government of Canada is constructing a legislative strategy to abrogate or derogate rights recognized in the Canadian Constitution, and doing this under the cover of an issue, safe drinking water. Everyone will emphatically agree with the importance of safe drinking water. Such wide-ranging unilateral derogations are incompatible with any notion of partnership and mutual respect. And this puts the government of Canada in opposition to the Courts.

In *Delgamuukw*, the Supreme Court of Canada concluded: “Some cases may even require the full consent of an aboriginal nation....” Similarly, the Court indicated in the *Haida Nation* case that such consent would be required on “very serious issues” relating to Indigenous peoples.

Sadly, we cannot point to good examples where the government is upholding these standards of the Supreme Court.

Canada has endorsed the *Declaration*. True reconciliation means a commitment to change. We will have reason to celebrate when Indigenous peoples’ collective and individual human rights are respected. When we see true implementation of the rights affirmed in the *Declaration* between done in partnership and mutual respect with Indigenous peoples.

Then we will congratulate the government. For now, we will wait and see.

For further information contact:
Jennifer Preston at jennifer@quakerservice.ca