



FEMMES AUTOCHTONES DU QUÉBEC INC.  
QUEBEC NATIVE WOMEN INC.

May 27, 2009

The Honourable James Moore  
Minister of Canadian Heritage and Official Languages  
15 Eddy Street  
Gatineau, Quebec  
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Re: Consultation process for Canada's Universal Periodic Review

Dear Minister Moore,

We, the undersigned, would like to share with you our concerns regarding the consultation process for Canada's Universal Periodic Review (UPR). This process, led by your ministry, Canadian Heritage, has failed to meet Canadian legal requirements and international norms. This deficiency was evident both prior and subsequent to the review of Canada's human rights performance at the UPR Working Group in Geneva on February 3, 2009.

According to the Human Rights Council's resolution 5/1 (adopted by consensus on June 18, 2007), States under review are encouraged to "prepare the information through a broad consultation process at the national level with all relevant stakeholders". As elaborated by the Supreme Court of Canada, the Crown has a duty to consult and accommodate Aboriginal peoples in accordance with s. 35 of the *Constitution Act, 1982*. This duty is understood as a part of an ongoing process of fair dealing and reconciliation. It arises when the Crown *contemplates conduct that might adversely affect* the rights of Aboriginal peoples in Canada. The Supreme Court has emphasized that "[i]n all its dealings with Aboriginal peoples, ... the Crown must act honourably. Nothing less is required".

In the preparation of Canada's National Report for the UPR, the government did not engage in any consultations with Indigenous organizations or civil society. This failure was explained by Canadian officials as a result of elections being held federally and in

Québec. Yet during this same period, an inter-departmental committee was created that met regularly during the whole period up to Canada's appearance before the UPR Working Group in February 2009. This was confirmed by Assistant Deputy Minister of Canadian Heritage, Diane Fulford, on March 30, 2009 in her testimony to the Standing Senate Committee on Human Rights.

As a Human Rights Council member, Canada has repeatedly failed to honour its commitment to "uphold the highest standards for the promotion and protection of human rights". This requirement cannot be suspended during Canada's UPR process.

During the follow-up meetings convened by Canadian Heritage on April 20 and 21, 2009 in Gatineau, Québec, there was little dialogue with federal officials. Crucial questions raised by Indigenous organizations and civil society were most often not answered. In particular, officials refused to indicate whether the government recognizes that the collective rights of Indigenous peoples are human rights. This made it difficult to have a meaningful discourse on human rights instruments referred to in various States' recommendations to Canada.

Apparently, government representatives who attended the meeting did not have the authority to respond adequately to our concerns. A Canadian Heritage representative also announced that organizations participating in this process would not be permitted to review Canada's report before it was submitted to the Human Rights Council.

During Canada's UPR, over 70% of the participating States raised serious concerns with regard to the treatment of Aboriginal peoples in Canada. Eighteen States referred to the *UN Declaration on the Rights of Indigenous Peoples*. Various States recommended that the Canadian government reconsider its position and endorse this human rights instrument. On this essential issue, among others, government officials refused to enter into genuine dialogue.

At the meeting on April 21, representatives of Indigenous organizations highlighted that Canada's duty to consult requires significantly more than simply holding meetings. It also includes the duty to provide all relevant information in a timely way and accommodate Indigenous peoples' concerns. However, federal officials refused to discuss the Crown's constitutional obligations. Instead, a Department of Justice official declared that the government was "putting aside" such constitutional issues in its UPR process and adopting a "narrower approach".

Under Canada's constitutional democracy, no government is above the law. Canada's Constitution cannot be cast aside. As affirmed by consensus by member States in the UN General Assembly:

We recommit ourselves to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations ...

These affirmations must fully apply to the world's Indigenous peoples and their collective human rights.

We urge the Canadian government to carry out meaningful consultations, in good faith, for the follow-up to the UPR process and together implement the positive recommendations by other States. In particular, we urge the government to endorse without delay the *UN Declaration on the Rights of Indigenous Peoples*, consistent with the Motion adopted by the House of Commons on April 8, 2008 and the recommendations of other States.

We look forward to a substantive response to this letter. In particular, it is important to elaborate how the Canadian government intends to substantially improve Canada's engagement with the UPR process, in conformance with relevant constitutional and international norms.

Respectfully submitted by:

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cc. Prime Minister Stephen Harper  
Minister of Foreign Affairs Lawrence Cannon  
Minister of Justice Rob Nicholson  
Michael Ignatieff, Leader of the Opposition  
Jack Layton, Leader of the New Democratic Party  
Gilles Duceppe, Leader of the Bloc Québécois  
Ed Fast, Chair, Standing House of Commons Committee on Justice and Human Rights  
Kevin Sorenson, Chair, Standing House of Commons Committee on Foreign Affairs and International Development  
Bruce Stanton, Chair, Standing House of Commons Committee on Aboriginal Affairs and Northern Development  
Raynell Andreychuk, Chair, Standing Senate Committee on Human Rights  
Consiglio Di Nino, Chair, Standing Senate Committee on Foreign Affairs and International Trade  
Gerry St-Germain, Chair, Standing Senate Committee on Aboriginal Peoples