

Expert Mechanism on the Rights of Indigenous Peoples
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A Joint Statement with Indigenous World Association; Grand Council of the Crees (Eeyou Istchee); International Organization of Indigenous Resource Development (IOIRD); Ochapowace First Nation; Canadian Friends Service Committee (Quakers)

Thank you, Mr. Chair. I am speaking on behalf of several organizations based in Canada. Indigenous peoples and civil society are moving ahead with implementation of the Declaration, even as we reside in a state that does not yet support the Declaration. The lead for implementation on international standards often rests with the non-state actors.

In Canada, many Indigenous and non-Indigenous organizations work in partnership on implementation. The first step is for people to be aware and learn about the contents of the Declaration. One of the first projects we undertook was producing booklet versions in English and French. We have distributed almost 100,000 copies of the Declaration.

Indigenous peoples' political organizations, including the Assembly of First Nations and the Nations of Treaties 6, 7, 8, have adopted resolutions to endorse and implement the Declaration and taken steps to integrate it into their own policy making. Also, municipal and territorial governments in Canada have stated endorsement of the Declaration and made a commitment to implementation.

We are delivering workshops and presentations of the Declaration to develop capacity of the contents and also to encourage both Indigenous peoples and civil society to engage with implementation. We have been invited to present at legal and academic conferences. The Indigenous leadership in British Columbia organized a major symposium on the implementation of the Declaration. From this symposium a book has been published, recording the presentations. We are pleased to report that all sectors of society have expressed great interest in the Declaration and learning how to can advance Indigenous peoples' rights.

Of course, part of our implementation has been encouraging Canada to change its position. We were therefore encouraged by the announcement that Canada is looking to endorse. However, we have concerns with regard to the manner that this may happen.

In June 2010 more than 40 Indigenous and civil society organizations wrote to the Prime Minister to urge the government of Canada to endorse the UN Declaration on the Rights of Indigenous Peoples in a positive manner without qualifications, consistent with international human rights law.

Canada announced that it will take steps to endorse the Declaration "in a manner that is fully consistent with Canada's Constitution and laws". Over 100 experts and scholars have concluded that the Declaration is fully consistent with the Canadian Constitution and Charter of Rights and Freedoms and it is a vital tool for their interpretation and implementation. Asserting that international human rights standards should be constrained by domestic law, contrary to the principles of international law, would detract from the value of Canada's endorsement.

A central objective of any international human rights instrument is to encourage States to reform laws, policies and practices so that human rights are respected. International human rights standards cannot merely condone or sustain existing State practices. To limit UN declarations in this way would defeat the purpose of having international standards.

We respectfully remind the government of Canada that the Declaration, like all human rights declarations adopted by the General Assembly, is universally applicable to all States. For endorsement to be meaningful, it must be made in good faith with a commitment to work with Indigenous Peoples and civil society on implementation.

Canadian courts are free to rely on the UN Declaration and other international instruments in interpreting Indigenous peoples' human rights. The government's endorsement of the Declaration is not necessary for it to be applicable in Canada. Indeed, the Declaration has already been used in domestic litigation.

In a recent brief to the Canadian Human Rights Tribunal, the Attorney General of Canada argued: "Canada's position on the Declaration has not changed. Consequently the Declaration should be given no weight as an interpretive source of law." This argument is not supportable or sustainable. As Special Rapporteur James Anaya highlighted on July 15 in this session of the Expert Mechanism:

... the Declaration reflects legal commitments that are related to the United Nations Charter, other treaty commitments and to customary international law. The Declaration builds upon the general human rights obligations of States under the Charter and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity that are incorporated into widely-ratified human rights treaties, as evident in the work of United Nations treaty bodies.

If Canada is not prepared to apply the Declaration as a source of interpretation of its obligations, any endorsement will be hollow and will achieve a negative response from inside and outside Canada.

In its preamble, the Declaration is described as "a standard of achievement to be pursued in a spirit of partnership and mutual respect". A clear statement of support for the UN Declaration is a necessary first step toward such a partnership.

Rather than delivering a hollow endorsement which does not include the participation of Indigenous peoples, Canada should change its attitude towards the rights of Indigenous peoples. Canada will be judged not by its words but by its actions.