

Background

United Nations Declaration on the Rights of Indigenous Peoples

(June 2007) There are over 370 million Indigenous people in Africa, the Americas, Asia, Europe and the Pacific. They are among the most impoverished, marginalized and victimized peoples globally. Their rights are routinely trampled by national governments, even when these rights are entrenched in law. This is why they urgently require affirmation and protection of their human rights.

The UN Declaration makes a unique and much needed contribution to international human rights standards. It focuses largely on Indigenous peoples' collective rights, including land rights, essential to their survival, well-being and ways of life. Every provision is interpreted, in accordance with core international principles such as justice, democracy, respect for human rights, equality and good governance.

This aspirational instrument does not create any new rights. It brings hope and dignity to Indigenous peoples. It encourages harmonious and cooperative relations between Indigenous peoples and States.

History of the Declaration

The UN Declaration on the Rights of Indigenous Peoples has been under development for more than two decades. Canada was an active participant at every stage.

A draft text was devised in a Working Group of independent experts, with extensive state and Indigenous participation, and then unanimously approved by a UN Sub-Commission. The draft text was further debated and refined during 11 years in a Working Group created by the Commission on Human Rights.

The compromise text that emerged in February 2006 has been supported by Indigenous peoples, human rights organizations and many states. It is also supported by former UN Secretary-General Kofi Annan; High Commissioner for Human Rights, Louise Arbour; Sub-Commission on the Promotion and Protection of Human Rights; UN Permanent Forum on Indigenous Issues; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people; and the African Commission's Working Group on Indigenous Populations/Communities.

On 29 June 2006, the Human Rights Council adopted the text by a vote of 30 to 2. Canada and the Russian Federation were the only two opposing votes.

At the UN General Assembly, Canada, United States, Australia and New Zealand actively lobbied African and other states. The African Group of states - that had expressed its full support for the Declaration at the Human Rights Council - radically altered their position. African states had largely ignored the development of the Declaration for over two decades. However, at the General Assembly, they proposed a resolution calling for more time for "consultations" and successfully rallied others states.

The latest proposal by the African Group deletes the right of self-determination and amends more than 30 provisions. Each state would determine who are "Indigenous peoples", thus putting into question every right in the Declaration. Other key rights are only recognized "in accordance with national laws". In a May 30 letter to the President of the UN General Assembly, Canada joined with Australia, New

Zealand, Russian Federation, Colombia, Suriname and Guyana in calling the African proposal helpful and a good basis for discussions to amend the Declaration. All of these allies of Canada have dismal human rights records, including in some cases torture, forced disappearances and extrajudicial killings.

Grave concerns about Canada's actions

In the final years of the UN Working Group, Canadian officials played a key role in finding common ground among states and Indigenous peoples. Since the election of the Harper government, positive leadership and flexibility have been converted to reversed positions.

During the past year, Canada has been one of the most active and aggressive opponents to the Declaration, lobbying states around the world to reopen negotiations to weaken the current text. The government is devoting more human and financial resources than any other state, focusing on those states with substandard human rights records.

Despite the international nature of the Declaration, the Indian Affairs Minister has displaced the Foreign Affairs Minister in the lead role. The Indian Affairs Minister misled Parliament by claiming that the Declaration "is inconsistent with the Canadian Charter of Rights and Freedoms ... with our Constitution ... with the National Defence Act ... with our treaties ... with all of the policies under which we have negotiated land claims for 100 years." (Hansard, June 21, 2006) Since then, the Minister only claims the Declaration "could be interpreted" in such a manner. Even this position remains unproven.

A government position paper was put online three months after Canada opposed the Declaration at the Human Rights Council. Canada's positions have been refuted by Indigenous peoples as erroneous, misleading and exaggerated. Yet Canada uses this flawed document in lobbying other states.

An access to information request has revealed that the Ministries of Foreign Affairs and Indian Affairs recommended that Canada support the adoption of the text at the Human Rights Council in June 2006. The Department of National Defence made a similar recommendation. However, the government has rejected these supportive positions.

Canada has violated its constitutional duties to consult Indigenous peoples about its abrupt policy shift. Inconsistencies with international human rights law are of little consequence. Rather, in meetings with federal officials, they repeatedly state "the Minister has strong views" and "nothing you can say will change the Minister's mind".

Canadian officials expressed deep concern about the use of *regional bloc voting* at the UN for purposes that are prejudicial to the advancement of human rights. Yet, in order to oppose the Declaration, Canada continues to exploit such regional strategies among African States.

The Harper government has a strong ideological bias. Contrary to its international obligations as a Human Rights Council member, Canada is severely politicizing Indigenous peoples' human rights.

The President of the UN General Assembly has appointed Ambassador Davide Jr. of the Philippines to undertake, on her behalf, further consultations. Canada, the United States and others are trying to use the opportunity to renegotiate -- and weaken -- the Declaration adopted by the Human Rights Council.

In reversing its positions, and arguing against text it helped draft, Canada has lost credibility among States concerned about the principled protection of human rights.