

# **Fact Sheet on *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 states:

“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* in itself is not legally binding in the same manner as treaties, but it has diverse legal effects. It 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

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Charter,” it is also “profoundly important for fulfilling their promise.”

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

12. After opposing and campaigning against the *Declaration* for more than four years, the federal government issued an official statement of endorsement in November 2010. In its endorsement, and in other statements made since then, the federal government has rejected the notion that it is under any obligation to review and revise laws and policies to bring them into line with the standards set out in the *Declaration*.

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 is the position taken by the 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. Significantly, Canada’s House of Commons endorsed the *Declaration* without condition or qualification in a resolution dated 8 April 2008.

### **How should the Declaration be implemented in Canada?**

16. Governments, in conjunction with Indigenous peoples, are urged to use the *Declaration* as the basis for reviewing and reforming laws and policies to ensure that Indigenous peoples’ rights are upheld without discrimination.

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*.

### **What is happening internationally?**

22. 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*.

23. The Office of the UN High Commissioner for Human Rights emphasizes that the "Declaration is now among the most widely accepted UN human rights instruments. It is the most comprehensive statement addressing the

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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."

24. The Declaration is being used by UN treaty bodies to interpret Indigenous peoples' rights and related State obligations under international treaties.

25. 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.

26. Greenland negotiated with Denmark significantly enhanced self-government, which its Premier describes "as a de facto implementation of the Declaration and... hopefully an inspiration to others".

27. The Supreme Court of Belize relied in part on the *UN Declaration* in an October 2007 case that affirmed the land and resource rights of the Maya people.

28. The Inter-American Court of Human Rights used the *UN Declaration* and other legal standards in its November 2007 ruling on the land rights of the Saramaka people in Suriname.

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