

# Support the United Nations Declaration on the Rights of Indigenous Peoples

## ~ Action alert ~

*"The Declaration is a visionary step towards addressing the human rights of indigenous peoples. It sets out a framework on which states can build or re-build their relationships with indigenous peoples. The result of more than two decades of negotiations, it provides a momentous opportunity for states and indigenous peoples to strengthen their relationships, promote reconciliation, and ensure that the past is not repeated. I encourage Member States and indigenous peoples to come together in a spirit of mutual respect, and make use of the Declaration as the living document it is so that it has a real and positive effect throughout the world."* Ban Ki-moon, UN Secretary General<sup>1</sup>

On 13 September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples. The Declaration provides minimum standards of protection for the rights and well-being of indigenous peoples around the world.

Its adoption by the General Assembly was described by the UN High Commissioner for Human Rights as "a triumph for justice and human dignity"<sup>2</sup>, and by the General Assembly President as a "major step forward towards the promotion and protection of human rights and fundamental freedoms for all"<sup>3</sup>.

An overwhelming majority of UN member states voted in favour of the Declaration last year - the NZ government was one of only four that voted against. It is now one of only three that continues to oppose it. Extraordinary behaviour for a government that describes itself as "a firm and principled defender of human rights"<sup>4</sup>, and is currently portraying itself as a "credible and committed" candidate for election to the UN Human Rights Council<sup>5</sup>.



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Printed copies of this alert are available from Peace Movement Aotearoa, and it is online at <http://www.converge.org.nz/pma/decl0908.htm>

## **1) Background information on the Declaration**

Around the world, indigenous peoples have historically, and in the present day, been subjected to gross and persistent human rights violations through the ongoing processes of colonisation, including dispossession of their lands, territories and resources; attempts to destroy their political, legal, social, and economic systems and institutions; marginalisation, racism and discrimination, and genocide. The need for a human rights instrument which would apply existing fundamental human rights protections to indigenous peoples' particular circumstances

has long been recognised, but it has been slow in coming.

The Declaration began its arduous journey<sup>6</sup> through the UN system in 1985, when the Working Group on Indigenous Populations began drafting its text. From the outset, the drafting process was different from the way human rights instruments had emerged until that point in time. In addition to Working Group experts and representatives of states (including those who ultimately voted against the Declaration last year), indigenous people's

representatives were actively involved in writing it - and that could be seen in the wording and concepts of the draft Declaration text that was agreed in 1993, and unanimously adopted by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Protection and Promotion of Human Rights) in 1994.

The draft Declaration then proceeded through the UN system at a somewhat glacial pace, due in large part to the hostile attitude of some governments such as NZ. In early 2006, indigenous people's representatives were essentially excluded from the process and a weaker version of the text was adopted by the UN Human Rights Council at its first session in June 2006.

The Declaration, with amendments that weakened it further, was finally adopted by the General Assembly on 13 September last year by a recorded vote<sup>7</sup>. One hundred and forty three UN member states voted in favour, eleven abstained, and four voted against - Australia, Canada, the United States, and New Zealand. Since then, the Australian government has changed its position on the Declaration<sup>8</sup>, and the Canadian House of Commons has supported it (although the Canadian government has not)<sup>9</sup>.

The Declaration provides "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world".<sup>10</sup> It has twenty four preambular paragraphs and forty six Articles, which outline indigenous peoples' collective and individual rights. The Declaration does not create any special or new rights; rather it applies already existing fundamental human rights to the particular circumstances of indigenous peoples. The Declaration explicitly encourages harmonious and cooperative relations between States and indigenous peoples<sup>11</sup>.

The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, in his recent report to the

UN Human Rights Council, summarised the provisions of the Declaration as follows:

*"The Declaration reaffirms basic individual rights to equality and non-discrimination, life and personal integrity and freedom, and nationality and access to justice; and it calls for special attention to specific rights and needs of indigenous elders, women, youth, children and persons with disabilities. At the same time, the Declaration affirms rights of a collective character in relation to self-government and autonomous political, legal, social and cultural institutions; cultural integrity, including cultural and spiritual objects, languages and other cultural expressions; lands, territories and natural resources; social services and development; treaties, agreements and other constructive arrangements; and cross-border cooperation.*

*Together with affirming the aspects of self-determination related to maintaining spheres of autonomy, the Declaration also reflects the common understanding that indigenous peoples' self-determination at the same time involves a participatory engagement and interaction with the larger societal structures in the countries in which they live. In this connection, the Declaration affirms indigenous peoples' right "to participate fully, if they so choose, in the political, economic, social and cultural life of the State"; and to be consulted in relation to decisions affecting them, with the objective of obtaining their prior, free and informed consent."*<sup>12</sup>

When adopting the Declaration, the General Assembly stated its conviction that:

*"the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith."*<sup>13</sup>

While the Declaration is not legally binding, it does have considerable moral weight, especially as it was adopted by such an overwhelming majority of UN member states. It represents a commitment on the part of the UN and all its member states (regardless of whether or not they voted for it) within the framework of the obligations established by the UN Charter to promote and protect human rights on a non-discriminatory basis<sup>14</sup>.

Since its adoption by the General Assembly, Bolivia and Ecuador have enacted legislation to give legal force to the Declaration, and

similar initiatives are being discussed in other countries<sup>15</sup>. The Supreme Court of Belize applied the Declaration in a landmark decision affirming the rights of the indigenous Maya communities in October 2007<sup>16</sup>. Within the UN system, the Declaration is being used to advance the work of the Office of the High Commissioner for Human Rights<sup>17</sup>, the human rights treaty monitoring bodies and Special Procedures, and guidelines have been developed to assist the UN system to mainstream and integrate indigenous peoples' issues into policies, activities and programmes at the country level<sup>18</sup>.

## 2) The government's position on the Declaration

As mentioned above, the NZ government is now one of only three governments that oppose the Declaration; and it is difficult to find any moral or legal basis for their position.

It has persistently opposed a Declaration that adequately reflects modern international norms and standards<sup>19</sup> on indigenous peoples' rights, speaking against it in UN bodies including the Human Rights Council<sup>20</sup> and General Assembly, and overstating the effect of the Declaration in national and international fora. The government's position was reached without proper consultation with Maori<sup>21</sup>, itself a breach of international minimum standards of behaviour expected of states in their relations with indigenous peoples.

The government's arguments against the Declaration have been many and varied over the years<sup>22</sup>, and have generally been characterised by misleading statements that serve only to illustrate just how far they are stuck in denial mode when it comes to indigenous peoples' rights.

For example, 'one law for all' type language has been used at times: "in elaborating the rights of one group of citizens, New Zealand cannot agree to a document that suggests there are two standards of citizenship or two classes of citizen"<sup>23</sup>, and "in articulating the

rights of one group, we have to be careful not to discriminate against other members of society."<sup>24</sup> Such statements conveniently ignore facts like the rights of particular groups already being articulated and protected in international law and NZ legislation (the rights of children and of women, for example) without discriminating against others; and that not articulating indigenous peoples' rights would constitute fundamental discrimination against them.

Their arguments have also been characterised by a failure to take into account existing norms and standards in international law, and an unfortunate propensity to focus on particular Articles (and over-exaggerate their potential) rather than reading the Declaration as a whole. These tendencies can be clearly seen in the NZ representative's speech<sup>25</sup> to the General Assembly, just prior to the vote last September.

She said that four provisions in the Declaration were: *"fundamentally incompatible with New Zealand's constitutional and legal arrangements, the Treaty of Waitangi, and the principle of governing for the good of all its citizens"*<sup>26</sup>.

That statement is so bizarre that it would take pages to address fully. In brief, it ignores the fact that the constitutional and legal arrangements here, as in all the colonised

countries, were imposed on indigenous peoples in the first instance, and have been used to deny their fundamental freedoms and human rights ever since. The problem is not the Declaration, rather the deficiencies of the current constitutional and legal arrangements.

The Declaration is certainly not incompatible with the Treaty of Waitangi - in particular the guarantee of the continuance of tino rangatiratanga, and the arrangements for kawanatanga and tino rangatiratanga and the relationship between them - although it can be argued that the Treaty, if it had been honoured by any NZ government, would have resulted in a situation where hapu and iwi would now be exercising considerably more authority and rights than the Declaration might ever deliver (probably not the meaning intended by the "incompatible" in the NZ statement however).

The right of indigenous peoples to have treaties between themselves and states recognised, honoured and enforced, is included in Article 37<sup>27</sup> of the Declaration, along with the statement that nothing in the Declaration can be interpreted as diminishing or eliminating the rights of indigenous peoples contained in such treaties. The possibility of any "incompatibility" between the Treaty and the Declaration is thus covered in its provisions.

Furthermore, the principle of "governing for the good of all its citizens" should not be based on the tyranny of majority rule and ongoing denial of the inherent and inalienable rights of Maori (both clearly "incompatible" with the Treaty). Rather, it should be based on honouring the Treaty, and on promoting and respecting the human rights of everyone. There is no set limit on human rights, they are not finite in number, their recognition and application is limited only by the imagination.

Obviously at times different human rights might need to be balanced with others - but equally obvious, the fair solution to that is negotiation to ensure that the rights of all are met in so far as possible without impinging on the rights of others. An outright denial of the rights of some, Maori in this instance, is

clearly not the solution and it is blatant discrimination against them.

In addition, international human rights instruments have global applicability, they are designed to set minimum standards and inspire states to better behaviour, not to be limited by any particular government's narrow and self-serving domestic political agenda. In that sense, it is irrelevant whether or not the government considers the Declaration to be compatible with its own arrangements.

The Articles of the Declaration stated as being of "central concern" to the government in the explanation of vote are: *"Article 26 on lands and resources, Article 28 on redress, and Articles 19 and 32 on a right of veto over the State"*<sup>28</sup> - the latter two Articles are in fact about good faith consultation, and the requirement to obtain the free, prior and informed consent of indigenous peoples about decisions that affect their rights and interests, not a "right of veto over the State".

To a general point before looking specifically at these four Articles, it was stated in the explanation of vote: "These provisions are all discriminatory in the New Zealand context."<sup>29</sup>

Aside from the issue raised above about the failure to respect indigenous peoples' rights itself being discriminatory, this is a classic example of the government's refusal to consider the Declaration as a whole - so, for example, Article 46 includes:

*"2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected ... 3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith."*<sup>30</sup>

When any other Article is read in conjunction with Article 46, it is obvious that the rights of all are to be protected - any assertion that a particular provision taken in isolation is "discriminatory" is a misrepresentation of the



Declaration as a whole.

With regard to Articles 26, 28, 19 and 32 - it is curious that the government selected these particular Articles for their stand against the Declaration in the General Assembly, as the provisions in them have already been used in international human rights jurisprudence for some years; a situation the government cannot claim to be unaware of.

As but one example, NZ is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, a legally binding human rights instrument, which is monitored by the Committee on the Elimination of Racial Discrimination. In common with the other human rights treaty monitoring bodies, the Committee has developed a number of General Recommendations to provide more detailed information on specific topics - including in 1997, a General Recommendation on Indigenous Peoples (GR 23)<sup>31</sup>. The Committee takes both the International Convention and its General Recommendations into account when assessing whether or not a state party is complying with the Convention.

It is illustrative to place the relevant provisions of GR 23 alongside the Articles of the Declaration that the government particularly objected to in the General Assembly.

On Article 26<sup>32</sup>, the right to lands, territories, and resources; and Article 28<sup>33</sup>, the right to redress - GR 23.5<sup>34</sup> includes:

*"The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not*

*possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."*

On Article 19<sup>35</sup>, requiring states to consult and cooperate in good faith with indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; and Article 32<sup>36</sup>, to do the same prior to the approval of any project affecting their lands, territories, and other resources - GR 23. 4<sup>37</sup> includes:

*"The Committee calls in particular upon States parties to: (d) Ensure that ... no decisions directly relating to their [indigenous peoples] rights and interests are taken without their informed consent."*

The provisions of Articles 26, 28, 19 and 32 can thus be seen to be nothing new, rather they are entirely consistent with those in GR 23 - and GR 23 is only one of the many sources of international norms, standards and practices relating to indigenous peoples' rights that were brought together in the Declaration, along with the human rights of general applicability outlined in the UN Charter, the Universal Declaration of Human Rights, the subsequent human rights Covenants and Conventions, the jurisprudence of their respective monitoring bodies, and the regional human rights instruments and bodies<sup>38</sup>.

A final point on the government's position on the Declaration, in a press release the day after the General Assembly vote, the Minister of Maori Affairs said: *"The declaration adopted in the UN yesterday is in effect a wish list which fails to bind states to any of its provisions, Mr Horomia said. "This means it is toothless"."*<sup>39</sup>

An interesting statement, which leads to an obvious question - if the Declaration is "toothless", why then, has the government put so much effort into opposing it?

### 3) What you can do to support the Declaration

This section has two parts with some suggestions about what you can do to support the Declaration:

- a) ideas for organisations, including details of the online register of organisations that support the Declaration; and
- b) suggestions for things everyone can do - collectively or individually - including information about the petition to parliament, suggestions for questions to candidates in the run-up to the election, and points you could include in letters to politicians.

#### a) What organisations can do

Below are some ideas for what organisations can do to support the Declaration - if your organisation is already supporting it in these or other ways, please send us a description of your initiative/s and we will add them to the Declaration support web page at <http://www.converge.org.nz/pma/declsup.htm>

- **Familiarise yourself with the text of Declaration**

Links to the text in English, te reo Maori, and a bilingual document are available at <http://www.converge.org.nz/pma/decrips.htm>

- **Help distribute copies of the Declaration**

Have copies available in your office (if you have one), and at your public meetings; advertise its availability in your newsletters or other publications.

- **Add your organisation's name to the online register of Declaration supporters**

The online register has been established to make the level of support for the Declaration in Aotearoa New Zealand more visible. It is a list of organisations that support the Declaration and are calling on the government to do the same. The register is at <http://www.converge.org.nz/pma/declreg.htm>

To add your organisation to the register, please send a message to [pma@xtra.co.nz](mailto:pma@xtra.co.nz) with your details.

If publicly registering your support requires a decision of your governing body, Annual

General Meeting or Hui a Tau, then please raise this as soon as you can - aside from anything else, it is a good opportunity to increase awareness about the Declaration.

- **Make your views publicly known**

Make your views known publicly in media releases, or statements about your support for the Declaration. These could be tied to particular organisational events, for example your Annual General Meeting, Hui a Tau, annual conference or similar.

Or you could link them to relevant anniversaries or other significant days - around the first anniversary of the General Assembly's adoption of the Declaration (13 September), United Nations Day (24 October), the anniversary of the signing of the Declaration of Independence (28 October), or Human Rights Day (10 December), for example.

- **Other ways organisations can support the Declaration**

Help distribute and collect signatures for the petition to parliament; ask politicians questions about their position on the Declaration in the run-up to the election; and write to Members of Parliament - information about these actions is in part b).

## b) What everyone can do

- **Distribute and collect signatures for the petition to parliament**

The petition is addressed to the House of Representatives and reads as follows:

*"Around the world, indigenous peoples continue to be subjected to grave and persistent violations of their fundamental human rights, including genocide. On 13 September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, a move described by the UN High Commissioner for Human Rights as a triumph for justice and human dignity.*

*When adopting the Declaration, the General Assembly stated its conviction "that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith." One hundred and forty three UN member states voted in favour of the Declaration - the NZ government was one of only four that voted against it. NZ is now one of only three governments that continue to oppose it.*

*The Declaration provides minimum standards of protection for the rights and well-being of indigenous peoples. It does not create any special or new rights; rather it applies already existing human rights to the particular circumstances of indigenous peoples. Its adoption by the General Assembly is an indication of the international community's commitment to the promotion and protection of the individual and collective rights of indigenous peoples.*

*We, the undersigned, are deeply disappointed by the government's ongoing opposition to the Declaration. It is unreasonable and unjust. It places NZ in a*

*tiny minority of states that are ignoring their obligations under international law, and it makes a mockery of the government's claims to be a principled defender of human rights and a credible candidate for the UN Human Rights Council.*

*We therefore call on the government to support the UN Declaration on the Rights of Indigenous Peoples, and to announce this in the General Assembly at the earliest possible opportunity."*

Please help to publicise, distribute and collect signatures for the petition - as it is a petition to parliament, signatures can only be accepted if they are on the Declaration petition form.

The petition is available online at <http://www.converge.org.nz/pma/declpet.pdf> or by email from [pma@xtra.co.nz](mailto:pma@xtra.co.nz) or you can get paper copies from Peace Movement Aotearoa. The deadline for return of signatures is 1 December, and the petition will be presented to parliament on Human Rights Day, 10 December (or on the closest possible date if no government has been formed by then).

- **Ask questions about the Declaration in the run-up to the election**

If you are writing to political parties or attending pre-election meetings, ask questions about their position on the Declaration.

Such questions might include: "do you think it is acceptable that NZ is one of only three governments in the world that is opposed to the UN Declaration on the Rights of Indigenous Peoples?", "how much did your party consult with hapu and iwi and / or NGOs when deciding your position on the Declaration?", "are you aware that the provisions of the Declaration are entirely consistent with NZ's existing obligations under international law?" and / or "the government's obligations under the Treaty of Waitangi?" Help make the Declaration an election issue.



- **Write to MPs**

Please take the time to write to the Prime Minister and Minister of Foreign Affairs, currently the same person, and your MP - particularly if s/he is from a party opposed to the Declaration (at the moment, all parties except for the Maori Party and Green Party); contact details for politicians are below.

As well as your own points, you could include some from the previous sections of this action alert - if you do not have much time, something brief including these points (or points from the petition text) would be fine:

- the Declaration is an important step forward for human rights and it will assist with addressing the widespread human rights violations against indigenous peoples around the world;
- the government's position on the Declaration is unreasonable and unjust, and it was decided without proper consultation with Maori;
- the Declaration is entirely consistent with both the Treaty of Waitangi and

NZ's existing obligations under international law, and is a reflection of the overwhelming majority opinion of the international community;

- the government must therefore demonstrate its often stated commitment to human rights by supporting the Declaration on the Rights of Indigenous Peoples, and announcing this in the General Assembly at the earliest possible opportunity.

Contact details for politicians: Helen Clark, Prime Minister and Minister of Foreign Affairs, email [pm@ministers.govt.nz](mailto:pm@ministers.govt.nz) or fax (04) 473 3579; letters to any MP should be posted to Freepost Parliament, Private Bag 18-888, Wellington 6160. Other contact details for MPs are available at <http://www.parliament.nz> or by phoning Parliament, tel (04) 471 9999.

It is very helpful for our work on this if you can send a copy of any letter, fax, or message you send, and of any replies you receive, to: Peace Movement Aotearoa, PO Box 9314, Wellington 6141; fax (04) 382 8173; or bcc to [pma@xtra.co.nz](mailto:pma@xtra.co.nz)

#### **4) Where you can get more information**

There are three main web sites in Aotearoa New Zealand with information about the Declaration:

- Aotearoa Indigenous Rights Trust - <http://airtrust.wordpress.com>
- Pacific Centre for Participatory Democracy - <http://www.pcpd.org.nz/ddrip>
- Peace Movement Aotearoa - <http://www.converge.org.nz/pma/decrips.htm>

Information about the NZ government and the International Convention on the Elimination of All Forms of Racial Discrimination is available at <http://www.converge.org.nz/pma/cerd71.htm>

If you do not have internet access and would like more information, please contact Peace Movement Aotearoa.

## References

<sup>1</sup> Secretary-General's Message on the International Day of the World's Indigenous People, 9 August 2008 - <http://www.un.org/events/indigenous/2008/sgmessage.shtml>

<sup>2</sup> 'High Commissioner for Human Rights hails adoption on Declaration on Indigenous Rights', UN Press Release, 13 September 2007 - <http://www.unhchr.ch/huricane/hurricane.nsf/view01/B8C805CF07C5ED86C125735500612DEA?opendocument>

<sup>3</sup> 'General Assembly adopts Declaration on Rights of Indigenous Peoples; 'major step forward' towards human rights for all, says President', UN Department of Public Information, 13 September 2007 - <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>

<sup>4</sup> See, for example, 'NZ to seek place on UN human rights body', Phil Goff, Minister of Foreign Affairs and Trade, 28 January 2004 - <http://www.beehive.govt.nz/node/18792> and 'Post-election brief: Human Rights', Ministry of Foreign Affairs and Trade, September 2005 - <http://www.mfat.govt.nz/Media-and-publications/Publications/Post-election-brief/0-brief8.php#humanrights>

<sup>5</sup> See for example the Ministry of Foreign Affairs and Trade campaign brochure at <http://www.mfat.govt.nz/downloads/humanrights/brochure.pdf> and their campaign web site at <http://www.votenz4hrc.org>

<sup>6</sup> For more detail on the Declaration's history and recent developments, the NZ government's position on it, and references to further sources of information, see for example the series of Peace Movement Aotearoa alerts: 'Act now! for Indigenous Peoples' Rights', January 2006 -

<http://www.converge.org.nz/pma/in220106.htm> 'Act now! for Indigenous Peoples' Rights', March 2006 -

<http://www.converge.org.nz/pma/in080306.htm> 'Act today for indigenous peoples' rights', June 2006 -

<http://www.converge.org.nz/pma/in270606.htm> 'Act now! United Nations Declaration on the Rights of Indigenous Peoples', 15 June 2007 - <http://www.converge.org.nz/pma/in150607.htm> 'On the International Day of the World's Indigenous People', 9 August 2007 - <http://www.converge.org.nz/pma/idwip07.htm> and 'NZ votes against indigenous peoples' rights at the UN as Declaration on the Rights of Indigenous Peoples is adopted by overwhelming majority', 14 September 2007 - <http://www.converge.org.nz/pma/in140907.htm>

<sup>7</sup> The record of voting is available in 'General Assembly adopts Declaration on Rights of Indigenous Peoples', at note 2

<sup>8</sup> The Australian government announced in February 2008 that it was "positively disposed" towards the Declaration, would consult on it, then let its views be known in the General Assembly, see, for example, 'Govt preparing to endorse UN Declaration', National Indigenous Times, 18 February 2008 - <http://www.nit.com.au/breakingnews/story.aspx?id=14034> and 'Australia's support of the Declaration of the Rights of Indigenous Peoples', Australia Human Rights Commission, 5 September 2008 - [http://www.humanrights.gov.au/social\\_justice/declaration/comments.html](http://www.humanrights.gov.au/social_justice/declaration/comments.html)

<sup>9</sup> A motion presented to the House of Commons on 7 April 2008 - "That the government endorse the United Nations Declaration on the Rights of Indigenous Peoples as adopted by the United Nations General Assembly on 13 September 2007 and that Parliament and Government of Canada fully implement the standards contained therein." (Third report of the Standing Committee on Status of Women) - was carried by a majority vote on 8 April 2008, see Hansard at

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=39&Ses=2&DocId=3394873> and

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=39&Ses=2&DocId=3400639#OOB-2407095> respectively. Despite this resolution, the minority Conservative Canadian government continued to maintain its opposition to Declaration. However, this situation may change soon as the Canadian parliament was dissolved on 8 September and elections will take place on 14 October - a change of government will most likely see Canada supporting the Declaration. That would leave the NZ and US governments alone in their opposition.

<sup>10</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 43

<sup>11</sup> Office of the High Commissioner for Human Rights' Declaration web page -

<http://www2.ohchr.org/english/issues/indigenous/declaration.htm>

<sup>12</sup> Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, S. James Anaya, UN Human Rights Council, 11 August 2008 (A/HRC/9/9), paragraphs 38-39 - <http://www2.ohchr.org/english/bodies/hrcouncil/docs/9session/A-HRC-9-9AEV.doc>

<sup>13</sup> United Nations Declaration on the Rights of Indigenous Peoples, Preamble, paragraph 18

<sup>14</sup> See, for example, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, at note 12

<sup>15</sup> Referred to in, for example, 'UN Experts welcome Canadian House of Commons endorsement of the Declaration on the Rights of Indigenous Peoples', 18 April 2008 - [http://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/0DF2B67C18A6B662C125742F00321882?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/0DF2B67C18A6B662C125742F00321882?OpenDocument)

<sup>16</sup> See, for example, 'IPLP Program Helps Lead Maya Communities to Victory in the Supreme Court of Belize', Media Release, October 2007 - [http://www.law.arizona.edu/depts/iplp/advocacy/maya\\_belize/index.cfm?page=advoc](http://www.law.arizona.edu/depts/iplp/advocacy/maya_belize/index.cfm?page=advoc)

<sup>17</sup> See, for example, Annual Report of the United Nations High Commissioner for Human Rights: The rights of indigenous peoples, 3 September 2008 (A/HRC/9/11) - <http://www2.ohchr.org/english/bodies/hrcouncil/docs/9session/A.HRC.9.11.doc>

<sup>18</sup> Guidelines on Indigenous Peoples' Issues, United Nations Development Group, February 2008 - <http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>

<sup>19</sup> For an overview of these, see for example, the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, at note 12; and Guidelines on Indigenous Peoples' Issues, at note 18

<sup>20</sup> See, for example, Shadow-Report to New Zealand's State Report to the Committee on the Elimination of Racial Discrimination: Summary, Aotearoa Indigenous Rights Trust, June 2007 - <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/airtrust.doc>

<sup>21</sup> See, for example, 'Aotearoa Indigenous Rights Trust Intervention in response to the NZ government's tabling of a new paper on the Draft Declaration on the Rights of Indigenous Peoples at the United Nations in Geneva', 13 September 2004 - <http://www.converge.org.nz/pma/in130904.htm> 'A Response to the Self-Determination Proposal of Australia, New Zealand and the United States Explanatory Note', Aotearoa Indigenous Rights Trust, 15 December 2005 - <http://www.pcpd.org.nz/ddrip/responsetonzproposal.doc> 'The Rights of indigenous peoples', Claire Charters, October 2006 - <http://www.converge.org.nz/pma/cc001006.pdf> and Shadow-Report to New Zealand's State Report to the Committee on the Elimination of Racial Discrimination at note 21

<sup>22</sup> See, for example, 'The Rights of indigenous peoples', at note 21, and the Peace Movement Aotearoa alerts at note 6

<sup>23</sup> Statement by Andrew Begg, NZ representative, UN General Assembly 60th Session, Third Committee, Item 68: Indigenous Issues, 20 October 2005

<sup>24</sup> Statement by Tim Caughley, NZ representative, Commission on Human Rights 61: Item 15: Human Rights and Indigenous Issues, 11 April 2005

<sup>25</sup> Declaration on the Rights of Indigenous Peoples: Explanation of Vote, Rosemary Banks, New Zealand Permanent Representative to the United Nations, 13 September 2007 - <http://www.converge.org.nz/pma/DRIPNZEoV.pdf>

<sup>26</sup> As above

<sup>27</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 37: "1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. 2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements."

<sup>28</sup> Declaration on the Rights of Indigenous Peoples: Explanation of Vote, at note 25

<sup>29</sup> As above

<sup>30</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 46: "1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. 2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society. 3. The provisions set

forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith."

<sup>31</sup> Committee on the Elimination of Racial Discrimination General Recommendation No. 23: Indigenous Peoples, 1997 -

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument)

<sup>32</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 26: "1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."

<sup>33</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 28: "1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress."

<sup>34</sup> General Recommendation No. 23: 5, at note 31

<sup>35</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

<sup>36</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 32: "1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."

<sup>37</sup> General Recommendation No. 23: 4d: "(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent", at note 31

<sup>38</sup> For more information about these, see the section 'The Declaration on the Rights of Indigenous Peoples and the larger body of relevant international sources' in Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, at note 12

<sup>39</sup> 'Maori Party's head in the clouds over non-binding UN declaration', Maori Affairs Minister Parekura Horomia, 14 September, 2007 -

<http://www.beehive.govt.nz/release/m%c3%a2ori+party%e2%80%99s+head+clouds+over+non-binding+un+declaration>

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Our thanks to everyone who assisted with getting this action alert together for publication on the first anniversary of the Declaration's adoption.

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