

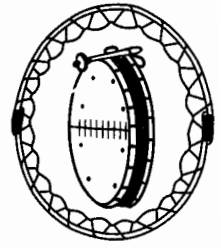


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 Grand Council of the Crees (Eeyou Istchee)
 Grand Conseil des Cris (Eeyou Istchee)

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CREE REGIONAL AUTHORITY
 ADMINISTRATION RÉGIONALE CRIE



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May 12, 2005

The Right Honourable Tony Blair, M.P.
 Prime Minister
 10 Downing Street
 London
 SW1A 2AA

Dear Mr. Prime Minister:

RE: U.N. Working Group on the draft Declaration on the
 Rights of Indigenous Peoples – Response to FCO
 Letter of January 13, 2005

I am writing again to respectfully request a response from you, as Prime Minister, to the urgent and growing international criticisms relating to the positions of your government in regard to Indigenous peoples' human rights. We are especially concerned that the United Kingdom continues to insist that the collective rights of Indigenous peoples must be excluded or segregated from international human rights law.

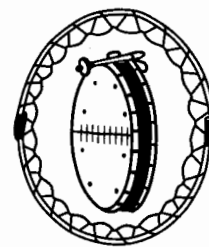
The UK government declares that it is willing to recognize our collective rights, as long as they are not considered as human rights under international law. As repeatedly stated by your government:

The UK has a long-held position that, with the exception of the right of self-determination (Common Article 1 of the two International Covenants on Human Rights), we do not accept the concept of collective human rights in international law. ... it is important that [collective] rights bestowed nationally remain distinct from individual human rights, enjoyed by indigenous people



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and all others, which are founded in international law and which provide proper protection to the individual.

Such discriminatory UK positions have potentially devastating consequences affecting over 300 million Indigenous people globally, some 150 million of whom live in Commonwealth countries. In light of the UK's international human rights obligations, we firmly believe that Indigenous peoples are owed a principled and substantiated response. In this important context, the UK and other States should be promoting *all* of our human rights, consistent with international law and its progressive development.

No meaningful response/ no genuine dialogue

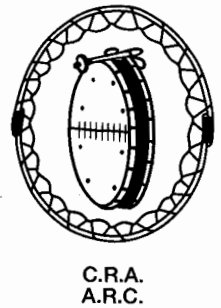
As you may recall, a joint letter, dated September 10, 2005, and accompanying Annex was sent to you and the Foreign and Commonwealth Office (FCO) last fall. This Joint Submission was entitled "Towards a *U.N. Declaration on the Rights of Indigenous Peoples*: Injustices and Contradictions in the Positions of the United Kingdom". The Submission was jointly made by Indigenous nations and organizations, as well as non-Indigenous human rights organizations, from the different regions of the world.

Since your Office indicated that it did not receive the Submission, two copies were mailed to you, along with my letter of December 15, 2004. In reply, we have received a letter, dated January 13, 2005, from Ms. Judith Mann, Foreign and Commonwealth Office (FCO), London.

The January 13 letter from FCO makes no effort to meaningfully respond. It simply states that we "are clearly already familiar with aspects of UK's position" and that it will "set [the UK's position] out again". To date, no substantiated response has been provided to the specific human rights arguments that we have raised in regard to UK government positions. For a number of years now, the same insensitive and obstructive approach has characterized UK positions in the standard-setting process on Indigenous peoples' rights at the United Nations in Geneva. As a result, there has been no genuine dialogue with UK government delegates in Geneva.



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Financial assistance not a substitute for a rights-based approach

Rather than reply to our serious and diverse criticisms of UK positions on Indigenous peoples' human rights, the UK chooses to emphasize the financial contributions that it makes to aid Indigenous peoples in various countries. However, such funding – whether it occurs as a form of development assistance, international cooperation or “charity” – is not a substitute for a rights-based approach. As the High Commissioner for Human Rights, Louise Arbour, has recently underlined in the Lafontaine-Baldwin Lectures in Québec City, Canada:

... human rights [must] have meaning for those most at the margins, a vindication of their equal worth and human agency. There will always be a place for charity, but charitable responses are not an effective, principled or sustainable substitute for enforceable human rights guarantees.

Financial assistance from developed States is often a welcomed and essential element in redressing the human rights violations and impoverishment faced by Indigenous peoples. Yet this aid must not be used by States to minimize or justify their refusal to fully recognize and respect our human rights without discrimination. In the absence of a principled rights-based approach, the perpetuation of our dependence on States would likely continue to our detriment. This would severely impede our efforts toward self-sufficiency and impair the exercise and enjoyment of our human rights.

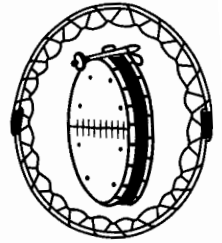
UK positions inconsistent with international law

In the Joint Submission referred to above, we provided you with an in-depth and well-substantiated 166-page analysis that challenges the very foundations of UK positions on Indigenous peoples' human rights. Our overall conclusions are that the UK positions are in many ways erroneous, discriminatory and incompatible with existing UK obligations under international law.



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In further support of our analyses and conclusions, I am enclosing a recent law article by Romeo Saganash and Paul Joffe entitled "Indigenous Peoples and International Human Rights: Eliminating State Discrimination". This article was submitted at the Oxford Amnesty Lectures in Oxford, England in February 2005. For your convenience, I have also highlighted in the Annex to this letter some of the basic inaccuracies, incoherencies and double standards that form the bases of UK positions on Indigenous peoples' rights. These positions have gravely eroded the credibility of your government within the WGDD as a committed supporter of human rights.

The *U.N. Charter* explicitly specifies that its Purposes and Principles require actions "promoting and encouraging respect" for human rights and not undermining them. The duty to promote respect for human rights is to be based on "respect for the principle of equal rights and self-determination of peoples".

Clearly, the U.N. and its Member States have no authority to weaken our human rights under international law and thereby create a lesser standard. In relation to Indigenous peoples, the creation of discriminatory double standards based on race is a violation of international law, including the Purposes and Principles of the *U.N. Charter*. It is also a violation of the peremptory norm that prohibits racial discrimination.

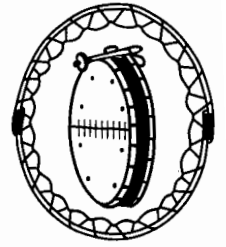
Security Council Members must be role models

In the global Indigenous context, the UK is effectively disregarding its international obligations as a Member State of the United Nations. Without credible reasoning, your government actively challenges a central and longstanding purpose of the draft *U.N. Declaration* – namely, the elaboration of minimum standards particularly in relation to our inherent collective rights. By seriously impeding progress on Indigenous peoples' human rights, the UK government perpetuates our global impoverishment. These debilitating conditions most often result in disproportionate impacts on Indigenous women and children.



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As you are well aware, respect for human rights is profoundly interrelated with principles of justice, democracy, peace and security. Rather than ensuring our security, the UK is promoting the insecurity of the world's Indigenous peoples by undermining our fundamental status and human rights.

These actions are wholly inconsistent with the role of the UK, as a Permanent Member of the U.N. Security Council, to promote international peace and security. Clearly, those States who serve on the Council should be role models and strictly abide by the highest human rights standards. Those who are unwilling to uphold the primacy of human rights under the *U.N. Charter* lose their legitimacy in the eyes of the world as Security Council Members.

Impending opportunity

In April 2005, the U.N. Commission on Human Rights extended the mandate of the WGDD for at least another year. This extension provides all participants with renewed opportunity to ensure a successful conclusion to the current standard-setting process. At this crucial stage, the erroneous and out-dated interpretations of our human rights by your government must be discarded. It is essential to adopt a just and enlightened approach.

We strongly urge your government to support the adoption of international standards that promote the dignity and well-being of Indigenous peoples as full members of the human family. This necessarily entails the unequivocal affirmation of our collective human rights, in a manner that embraces such universal values as diversity, tolerance and non-discrimination.

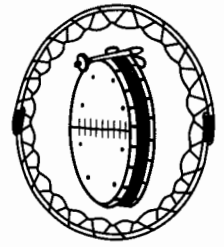
Respectfully submitted,

Grand Chief Dr. Ted Moses, O.Q.
Grand Council of the Crees (Eeyou Istchee)



G.C.C.E.I.

Encl.



C.R.A.
A.R.C.

- cc. Mr. Kofi Annan, Secretary-General of the United Nations
Mr. Koïchiro Matsuura, Director-General of UNESCO
The Honourable Louise Arbour, High Commissioner for Human Rights
Mr. Rodolfo Stavenhagen, Special Rapporteur for the Human Rights and Fundamental Freedoms of the Indigenous People
Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
H.E. Dr. Makarim Wibisono (Indonesia), Chairperson, Commission on Human Rights
Mr. Luis-Enrique Chávez (Peru), Chairperson-Rapporteur, UNCHR Working Group
Mr. Julian Burger, OHCHR
Mr. Dimitrij Rupel (Slovenia), Chairman-in-Office, Organization for Security and Cooperation in Europe
Mr. Jean Asselborn (Luxembourg), President, Council of the European Union
Mr. Josep Borrel Fontelles (Spain), President, European Parliament
Mme Hélène Flautre, Chairperson, Subcommittee on Human Rights, European Parliament
Rt. Hon. Charles Kennedy, MP, Leader, Liberal Democrats, UK Parliament
Rt. Hon. Menzies Campbell QC, MP, Liberal Democrats, UK Parliament
Ms. Judith Mann, Foreign and Commonwealth Office, UK government

ANNEX

UNDERMINING INDIGENOUS PEOPLES' HUMAN RIGHTS: POSITIONS AND ACTIONS OF THE UK GOVERNMENT

During the past 10 years, only 2 of 45 Articles in the draft *U.N. Declaration on the Rights of Indigenous Peoples* have been provisionally adopted in the standard-setting process in Geneva. The following examples illustrate how the government of the United Kingdom has repeatedly impeded significant progress, by unconscionably undermining the status, human rights and security of Indigenous peoples worldwide:

Undermining our status as "peoples"

- Challenging our status as "peoples" under international law, in order to deny us full recognition of our human rights (contrary to Art. 1 of the *International Convention on the Elimination of All Forms of Racial Discrimination*)
- Refusal to recognize our status as "peoples" under international law, unless we agree that our collective human rights are not human rights

Discriminating on the right of self-determination

- Refusal to unequivocally recognize that the collective human right of peoples to self-determination under international law applies equally to Indigenous peoples, as affirmed by U.N. treaty monitoring bodies
- Proposing to "create" a new right of self-determination for Indigenous peoples, contrary to UK legal obligations under both international human rights Covenants to promote the realization of the existing right and respect it as such

Denial of our collective human rights

- Denial of Indigenous peoples' collective human rights, which are integral to our identity, cultures, traditions, legal systems and survival as peoples

- Seeking to “individualize” our collective land rights, with utter disregard for the devastating impacts such State actions have already caused Indigenous peoples in different regions of the world
- Insisting that, except for the right of self-determination, international law does not recognize the concept of collective human rights, yet failing to explain the inclusion of such rights in the *Indigenous and Tribal Peoples Convention, 1989*, the *Convention on the Prevention and Punishment of the Crime of Genocide* and other international instruments

Denial of the “pre-existing” or inherent nature of our collective rights

- Characterizing Indigenous peoples’ collective rights as “granted” by national governments, despite rulings of domestic courts that these rights are “pre-existing” or inherent, and not dependent on State recognition for their existence
- Opposing the “creation” of new collective rights in the draft *U.N. Declaration*, even though the *Declaration* itself, as well as international experts, affirm that these rights are inherent

Denial of Indigenous peoples’ property rights as human rights

- Refusal to recognize Indigenous peoples’ land and resource rights as human rights, even though collective property rights of peoples are recognized in both international human rights Covenants (rights to natural resources), the *Indigenous and Tribal Peoples Convention, 1989* and the *African Charter on Human and Peoples’ Rights*

Misuse of the principles of universality and equality

- Insisting that the principles of universality and equality preclude recognition of Indigenous peoples’ collective rights as human rights, thereby disregarding that these principles are applied flexibly and in a culturally-sensitive manner
- Claiming that the principle of equality means that all individuals and groups must have the same or equal rights, while ignoring that diverse

international human rights instruments universally recognize different human rights in relation to “peoples”, women, children, etc.

Devaluing treaties entered into with Indigenous peoples

- Insisting that treaties entered into prior to 1948 have no relevance to international human rights law, which view has been explicitly contradicted in the Indigenous context by the Inter-American Commission on Human Rights

Undermining the integrity of Indigenous peoples’ territories, societies, etc.

- Undermining the integrity of Indigenous peoples’ territories, societies, legal systems and rights, while claiming that the territorial integrity of existing States must be safeguarded
- Overall weakening the draft *U.N. Declaration* through unsubstantiated and obstructionist proposals, despite the urgent need globally for a strong and uplifting *Declaration* as a first step in addressing rampant human rights violations.