

IMPLEMENTING UNDRIP IN BC: A DISCUSSION PAPER SERIES
BY THE RESIDENTIAL SCHOOL HISTORY AND DIALOGUE CENTRE

A Commentary on the Federal
Government's Legislation to Implement
the *United Nations Declaration on the
Rights of Indigenous Peoples*



On December 3, 2020, the federal government tabled Bill C-15 *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* in the House of Commons. The Bill comes over five years after the Liberal Government was elected on a platform that promised a “renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition, rights, respect, co-operation, and partnership” and “the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)”. It has been almost four years since the government endorsed UNDRIP without reservation, almost three years since it promised to pass a comprehensive and transformative recognition and implementation of Indigenous rights framework, and over one year since British Columbia adopted its *Declaration on the Rights of Indigenous Peoples Act*.

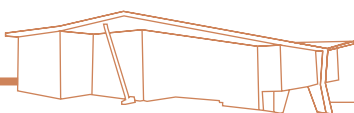
Perhaps unsurprisingly, the release of Bill C-15 has resulted in a significant amount of commentary, including from Indigenous Peoples, experts, lawyers, politicians, and industry representatives and organizations. The views and perspectives cover the full spectrum from support, to caution, to rejection. Also unsurprisingly, there exists a fair amount of misunderstanding and misinformation about what Bill C-15 actually says.

Overview of Bill C-15

Bill C-15 follows a model of legislation regarding the UN Declaration that has been around for over a decade. Federally this model of legislation was seen most recently in Bill C-262, a private members bill that successfully passed third reading in the House of Commons in 2019 but stalled in the Senate. Provincially, this model of legislation is basically the same as BC’s Declaration Act, which has been in force since November 2019.

Bill C-15 has the purposes of affirming the Declaration as a universal international human rights instrument with application in Canadian law and providing a framework for the Government of Canada’s implementation of the Declaration.

To achieve these purposes Bill C-15 places two distinct, substantive obligations on the federal government. The first obligation is that the federal government must, in consultation and cooperation with Indigenous Peoples, “take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.” This will require the federal government to immediately have processes to ensure new proposed laws are consistent with the UN Declaration before they are enacted. To date, no such process exists. It will also require a clear effort and process to review and change existing laws.



Second, the federal government must establish, in consultation and cooperation with Indigenous Peoples, “an action plan to achieve the objectives of the Declaration.” The “objectives of the Declaration” are far-ranging including ending racism, prejudice, and discrimination throughout society, and upholding the minimum standards for the survival, dignity, and well-being of Indigenous Peoples. The action plan is to be established within three years and is supported by reporting requirements.

Additionally, the Bill has an extensive preamble intended to be of assistance in interpreting the purposes of the Bill and providing context for the implementation of the Declaration to Canadian laws. The preamble includes important statements such as: “Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust;”; “Whereas the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous Peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;”; “Whereas the Declaration emphasizes the urgent need to respect and promote the inherent rights of Indigenous Peoples of the world which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources.”

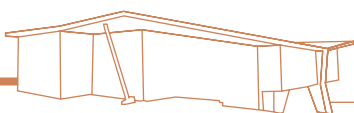
Situating Bill C-15

There are three contexts vital to understanding Bill C-15 and the discourse around it.

UN Declaration as “the framework for reconciliation”

First, is the context of the UN Declaration itself. The UN Declaration has been identified by a broad consensus of Indigenous Peoples, experts, and studies as an important foundation for reconciliation in Canada. The UN Declaration was developed through years of dialogue and deliberation between States and Indigenous Peoples from around the world. The UN Declaration does not create new rights. Through its preamble and 46 articles, the UN Declaration states international human rights norms in the specific context of Indigenous Peoples. These international human rights norms have been broadly accepted as the foundation for social justice, equality, dignity and respect since the adoption of the Universal Declaration of Human Rights in the aftermath of the second world war.

Since the adoption of the UN Declaration in 2007, Indigenous Peoples have called for its full implementation. The federal government was initially resistant to the Declaration, voting against it



at the United Nations. Canada issued a formal “statement of support” in 2010. It was not until 2016 that the federal government made an explicit statement that its support was without conditions. In 2015, the Truth and Reconciliation Commission (TRC) Calls to Action called on governments to adopt and implement the UN Declaration as “the framework for reconciliation.” The TRC also called on all sectors of society to utilize the UN Declaration as a framework.

The UN Declaration adds an additional and distinct framework for the work of recognizing and implementing Indigenous rights, including treaties, in Canada. The constitutional rights of Indigenous Peoples protected under section 35(1) are collective rights held by a collective of people. These rights are defined by treaties, or cultures and practices that have a certain historic basis. Further, these rights, like all constitutional rights, are limitations on the State and what actions the State may take.

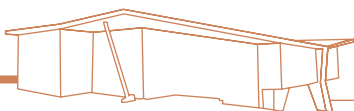
The UN Declaration, on the other hand, states basic human rights norms are to be respected and upheld, and are seen as foundational to the survival, dignity, and well-being of Indigenous Peoples. They articulate standards that societies as a whole should be reflecting, and which are fundamental to eradicating dynamics of oppression, discrimination, racism, and prejudice. Some of these norms relate to the individual, and some are collective. Governments, industry, civil society, and individuals all have roles they can and should play in seeing these human rights upheld.

As an international “declaration” – as distinct from, for example, an international treaty – the UN Declaration is not binding on states as international law, except to the degree its articles may be part of international customary law. However, states can, and indeed are expected, to take steps to implement the UN Declaration domestically:

38. States in consultation and cooperation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

In a Parliamentary system such as Canada, the means for doing this are through changes in legislation, policies and practices. As well, as the Supreme Court of Canada has affirmed, international declarations should be used to interpret domestic law – which in this instance would include interpretation of the meaning of section 35(1) of the Constitution.

In taking steps to pass legislation, such as the Declaration Act in BC and Bill C-15 federally, governments are following a course of action that has been debated and discussed for a decade, and put forward as a path to giving more scope, clarity, and effectiveness to the long struggle of recognition and implementation of Indigenous rights in Canada.



Legislative legacy of colonialism in Canada

Second is the context of federal legislation regarding Indigenous Peoples in Canada. Canada is a colonial state. The central legal instrument of colonialism is the *Indian Act*, which dates back to the 1800s. The *Indian Act* is a legal tool of segregation, land taking, dismantling of governance systems, the breaking up of children and families, and an attack on Indigenous individuals, cultures and societies. The *Indian Act* also remains the primary, and for the longest time effectively the only, legislation about Indigenous Peoples.

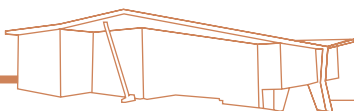
This is to say there is no history of legislation upholding or affirming the rights of Indigenous Peoples in Canada, apart from two recent federal laws affirming the rights and authority of Indigenous governments in relation to children, youth and family services, and Indigenous languages. These new laws are in the early stages of implementation and have had nominal impact to date.¹ There is only a history of legislation of colonialism through the *Indian Act*. This a shameful fact. By contrast, for example, the United States now has decades of legislation, enacted with Indigenous Peoples, that is about Indigenous self-determination in different sectors and topics. This is not to say we should or even could follow the approach in the United States. But it does highlight how complacent, weak, and inferior Canada has been in the face of our legacy of colonialism.

Not only is there not a history of rights affirming legislation, there is the parallel history of Indigenous Peoples being left out of legislative development altogether, even when it may impact them and their rights. This is another legislative legacy of colonialism. A colonial regime was imposed through the *Indian Act*; which has been reinforced throughout history by ignoring Indigenous Peoples and their rights in legislative and policy processes. Of course, this has included, for example, denying there even was a Métis people.² And there is the enduring reality that colonialism has not impacted all Indigenous Peoples the same way. Some Indigenous Peoples, including Indigenous women, children, two-spirited, and others experienced particular forms of colonialism, that require distinct approaches to address. Legislation and policy have often been used to explicitly and implicitly further discriminate and oppress these peoples.

Legislation and policy, with the *Indian Act* in the lead, has been a major tool in structuring colonialism in Canada. Addressing this will require legislative and policy transformation – a transformation which must be done in partnership with Indigenous Peoples. This will be immensely challenging, both because of the scope of what must be done, and the reality that there exists no

1 *Indigenous Languages Act* (S.C. 2019, c. 23) at <https://laws-lois.justice.gc.ca/eng/acts/l-7.85/page-1.html> and *An Act respecting First Nations, Inuit and Métis children, youth and families* (S.C. 2019, c. 24) at <https://laws.justice.gc.ca/eng/acts/F-11.73/page-1.html>

2 *Daniels v. Canada* (Indian Affairs and Northern Development) 2016 SCC 12, [2016] 1 S.C.R. 99 at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15858/index.do>



real history of governments engaging and working with Indigenous Peoples as true partners in legislative and policy development. As such, there will be tremendous innovation, courage, and leadership required, including to overcome legitimate skepticism.

The Challenge of unfulfilled promises

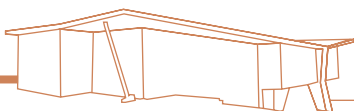
Third is the context of the unmet promises. The history of unmet promises is long and extends over many governments throughout the history of this country. It remains a challenge. When elected in 2015 the Liberal government promised bold, transformative, legislative and policy action, including to implement the UN Declaration. These promises have not yet been fulfilled. When the government finally appeared to be moving on its commitment, through a speech by the Prime Minister in the House of Commons in 2018 committing to pass a comprehensive and transformative recognition and implementation of rights framework, skepticism and impatience as a result two and half years of relative legislative and policy inaction had built up. This was then compounded by an engagement process that was unclear, and did not build a vision or understanding of what a transformative recognition and implementation of an Indigenous rights framework might look like.

This pattern of accompanying bold rhetoric with on-going struggles in taking real action, compounded by a lack of implementation of a clear and principled approach regarding the recognition and implementation of Indigenous rights, creates a very challenging context for this government to now try to advance meaningful change. The dynamics of trust and mistrust are integral to success or failure in the work of reconciliation. There is great mistrust of any government that exists because of our history of colonialism. There is also specific and direct mistrust whenever a particular government says or promises one thing, and then does another, or little. This is now a reality facing the current government.

Assessing Bill C-15

With these contexts in mind, what can be said about the content of Bill C-15? We offer the following observations.

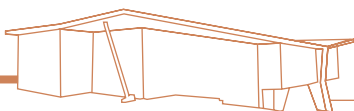
- Bill C-15 has the potential to significantly improve the lives of Indigenous Peoples, but it will not do so immediately or directly. Realizing these benefits is dependent on the measures required by the Bill, namely the creation of a UN Declaration implementation plan and the review and reform of federal laws.
- Further legislative and policy reform is needed, and the sooner the better. Bill C-15 is a door,



but the room it opens into is not yet built. Most fundamental are legislative enactments that would accomplish the following: bind government actors to standards of the recognition and implementation of rights; explicit and principled recognition of Indigenous self-determination and the inherent right of self-government, including obligations on government to support Nations moving out from under the *Indian Act* when they determine they are ready to do so; clear, independent, oversight and accountability of government action and behaviour in relation to Indigenous Peoples; support for new Indigenous institutions that support Indigenous Nation and government re-building and removes, over time, the colonial role of the Department of Indigenous Services; new dispute resolution mechanisms, including recognized roles for Indigenous laws and legal orders; and mechanisms to support the implementation of free, prior and informed consent.

- Some of the commentary around the Bill reflect old prejudices and biases and are not legally accurate or well informed. For example, fears about free, prior, and informed consent from industry and more conservative politicians are simply wrong. As has been discussed at length elsewhere, much of this fear-mongering is rooted in fundamental misunderstandings of how consent is operationalized, as well as misreadings of the law.³
- Similarly unfounded, are views from some experts who argue that Bill C-15 changes the nature or character of the UN Declaration by subordinating it to section 35(1). This is legally wrong, though it is understandable why it may be politically expedient for some. The non-derogation clause in the Bill states: “This Act is to be construed as upholding the rights of Indigenous Peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them.” This is a clause the language of which Indigenous Peoples have long argued be included in all federal legislation. The reason for this was to ensure that no legislative act can negatively impact Indigenous rights, including rights enshrined in historic treaties. In the context of Bill C-15, the legal effect of this clause is that not only can there be no negative impacts on rights or treaties as result of the Bill, but also that UN Declaration can only be used to build above and beyond what is already protected under section 35 of the Constitution.
- Bill C-15 is modest. Its immediate legal impact will be that the UN Declaration should be increasingly used by Courts to interpret and apply section 35(1), and we expect Indigenous Peoples will increasingly use the UN Declaration in framing and bringing court challenges. To this end, the long preamble of Bill C-15 is also helpful. The other effects are longer term. There are legal obligations for alignment of laws and an action plan. However, the effectiveness of these will substantially depend upon political will, and the nature of the partnership that is formed with Indigenous Peoples to do this work.

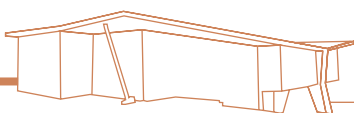
3 See for example: <https://irshdc.ubc.ca/2019/10/22/editorial-confronting-myths-about-indigenous-consent/>



Bill C-15 leaves many outstanding questions that government should be answering in detail:

- What plans are in place for the further legislative and policy reforms that are necessary?
- How will Indigenous Peoples across the country be partners in developing that legislation?
- What changes are contemplated by the machinery of government to effectively implement Bill C-15?
- What immediate steps will be taken to ensure alignment of new proposed laws with the UN Declaration?
- What process will be used nationally to develop the action plan?
- What financial resources is the government dedicating to the engagement required to do the work under the Bill, as well as to the substantive shift to implementing Indigenous human rights?
- What regional and Nation-based approaches will ensure that the action plan responds to the requirements of Indigenous Peoples, and are not dictated by federal government priorities?

As debate and dialogue about Bill C-15 continues, it is imperative that perspective and accuracy be in the forefront. The Bill is a step. Important, but small. It has a chance to improve things, and does break the long pattern of failing to legislate to uphold Indigenous rights. More will be needed, and the most critical issue is what happens next should the Bill be passed.



BILL C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Second Session, Forty-third Parliament,

69 Elizabeth II, 2020

HOUSE OF COMMONS OF CANADA

BILL C-15

An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

FIRST READING, DECEMBER 3, 2020

MINISTER OF JUSTICE

SUMMARY

This enactment provides that the Government of Canada must take all measures necessary to ensure that the laws of Canada are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*, and must prepare and implement an action plan to achieve the objectives of the Declaration.

1. Short Title
United Nations Declaration on the Rights of Indigenous Peoples Act
 2. Interpretation
Definitions
 3. Designation of Minister
Order designating Minister
 4. Purpose of Act
Purpose
Measures for Consistency of Laws and Achieving the Objectives of the Declaration
 5. *Consistency*
 6. *Action plan*
 7. Report to Parliament
Annual report
- SCHEDULE

BILL C-15

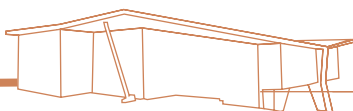
An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Preamble

Whereas the *United Nations Declaration on the Rights of Indigenous Peoples* provides a framework for reconciliation, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith;

Whereas the rights and principles affirmed in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada;

Whereas, in the outcome document of the high-level plenary meeting of the General Assembly of the United Nations known as the World Conference on Indigenous Peoples, Canada and other States reaffirm their solemn commitment to respect, promote and advance the rights of Indigenous peoples of the world and to uphold the principles of the Declaration;



APPENDIX

Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Whereas, in its document entitled Calls to Action, the Truth and Reconciliation Commission of Canada calls upon federal, provincial, territorial and municipal governments to fully adopt and implement the Declaration as the framework for reconciliation, and the Government of Canada is committed to responding to those Calls to Action;

Whereas, in its document entitled Calls for Justice, the National Inquiry into Missing and Murdered Indigenous Women and Girls calls upon federal, provincial, territorial, municipal and Indigenous governments to implement the Declaration, and the Government of Canada is committed to responding to those Calls for Justice;

Whereas First Nations, Inuit and the Métis Nation have, throughout history and to this day, lived in the lands that are now in Canada with their distinct identities, cultures and ways of life;

Whereas Indigenous peoples have suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources;

Whereas the implementation of the Declaration must include concrete measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons;

Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust;

Whereas the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;

Whereas the Declaration emphasizes the urgent need to respect and promote the inherent rights of Indigenous peoples of the world which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources;

Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government;

Whereas the Government of Canada is committed to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous peoples, to achieve the objectives of the Declaration;

Whereas the Government of Canada is committed to exploring, in consultation and cooperation with Indigenous peoples, measures related to monitoring, oversight, recourse or remedy or other accountability measures that will contribute to the achievement of those objectives;

Whereas the implementation of the Declaration can contribute to supporting sustainable development and responding to growing concerns relating to climate change and its impacts on Indigenous peoples;

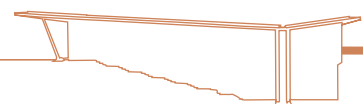
Whereas the Government of Canada acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority;

Whereas the Government of Canada welcomes opportunities to work cooperatively with those governments, Indigenous peoples and other sectors of society towards achieving the objectives of the Declaration;

Whereas the Declaration is affirmed as a source for the interpretation of Canadian law;

Whereas the protection of Aboriginal and treaty rights — recognized and affirmed by section 35 of the Constitution Act, 1982 — is an underlying principle and value of the Constitution of Canada;

Whereas there is an urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements, and those treaties, agreements and arrangements can contribute to the implementation of the Declaration;



Whereas respect for human rights, the rule of law and democracy are underlying principles of the Constitution of Canada which are interrelated, interdependent and mutually reinforcing and are also recognized in international law;

And whereas measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

Interpretation

Definitions

2 (1) The following definitions apply in this Act.

Declaration means the United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007 and that is set out in the schedule. (*Déclaration*)

Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*. (*peuples autochtones*)

Minister, for the purposes of any provision of this Act, means the federal minister designated as the Minister for the purposes of that provision under section 3. (*ministre*)

Rights of Indigenous peoples

(2) This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them.

Clarification

(3) Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.

Designation of Minister

Order designating Minister

3 The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of any provision of this Act.

Purpose of Act

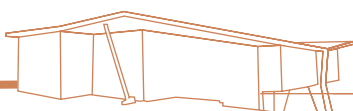
Purpose

4 The purpose of this Act is to

- (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and
- (b) provide a framework for the Government of Canada's implementation of the Declaration.

Measures for Consistency of Laws and Achieving the Objectives of the Declaration

Consistency



APPENDIX

Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

5 The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.

Action plan

6 (1) The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration.

Content

(2) The action plan must include

(a) measures to

(i) address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons, and

(ii) promote mutual respect and understanding as well as good relations, including through human rights education; and

(b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.

Other elements

(3) The action plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan.

Time limit

(4) The preparation of the action plan must be completed as soon as practicable, but no later than three years after the day on which this section comes into force.

Tabling in Parliament

(5) The Minister must cause the action plan to be tabled in each House of Parliament as soon as practicable after it has been prepared.

Action plan made public

(6) After the action plan is tabled, the Minister must make it public.

Report to Parliament

Annual report

7 (1) Within 90 days after the end of each fiscal year, the Minister must, in consultation and cooperation with Indigenous peoples, prepare a report for the previous fiscal year on the measures taken under section 5 and the preparation and implementation of the action plan referred to in section 6.

Tabling in Parliament

(2) The Minister must cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed.

Referral to committee

(3) The report stands permanently referred to the committee of each House of Parliament that is designated or established to review matters relating to Indigenous peoples.

Report made public

(4) After the report is tabled, the Minister must make it public.

APPENDIX

Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

SCHEDULE

(Subsection 2(1))

United Nations Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly on 13 September 2007

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006¹, by which the Council adopted the text of the *United Nations Declaration on the Rights of Indigenous Peoples*,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the *United Nations Declaration on the Rights of Indigenous Peoples* as contained in the annex to the present resolution.

107th plenary meeting
13 September 2007

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their

¹ See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.

political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

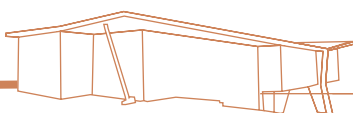
Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

² See resolution 2200 A (XXI), annex.

³ A/CONF.157/24 (Part 1), chap. III.



APPENDIX

Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

⁴ Resolution 217 A (III).

2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

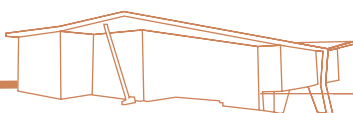
1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.



APPENDIX

Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

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.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

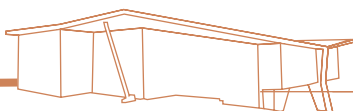
1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional 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.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

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.



APPENDIX

Bill C-15: An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

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.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

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.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

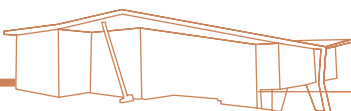
The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.



APPENDIX

Bill C-15: An Act respecting the 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.