
Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa (Ontario) K1P 6L5
Téléphone: 613-241-6789 Télécopieur: 613-241-5808
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**ANNUAL GENERAL ASSEMBLY
JULY 11, 12, & 13, 2023; HALIFAX, NS**

Resolution no. 55/2023

TITLE: Support for the Reform and Enforcement of First Nations Laws

SUBJECT: Policing, Rights

MOVED BY: Chief Byron Louis, Okanagan Indian Band, BC

SECONDED BY: Judy Wilson, proxy, Osoyoos Indian Band, BC

DECISION Carried by Consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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

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traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

- B. First Nations have a right to self-government recognized and affirmed under Section 35 (1) of the Constitution Act, 1982, which includes, at minimum, the same rights to create, draft, enact and enforce laws as other governments in Canada.
- C. The Indian Act is an assimilationist and colonial legislation intended to “rid Canada of the Indian Problem,” a perpetuation of colonial policies and ideals and is in direct conflict with First Nations’ inherent right to manage their own land, membership, citizenship and identities.
- D. Section 81 of the Indian Act states:
 - i. (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely (c) the observance of law and order;
- E. The Indian Act paternalistically recognizes and limits First Nations inherent right to govern themselves and places the enforcement of First Nations laws in the hands of the colonial state without specifying which state actor is responsible or recognizing any reasonable means of enforcement.
- F. Federal, provincial, and territorial governments and their policing agencies have refused to enforce First Nations laws, leading to a crisis of governance in First Nations where First Nations laws are not treated as equal to those passed by settler communities.
- G. First Nations should not be required to rely on neighbouring municipal police forces to enforce First Nation laws, especially where those police forces are frequently plagued by systemic racism and discrimination against First Nations Peoples.
- H. Federal, provincial and territorial refusal to respect and enforce First Nations laws has been further exacerbated by the COVID-19 crisis, when the safety and health of Indigenous citizens was at risk due to inability to enforce First Nation laws.
- I. The expense of enforcing First Nations laws in the colonial court system is prohibitively expensive. Many First Nations cannot afford to go to court regarding the ongoing legal issue of the federal government’s failure to recognize First Nations jurisdiction.
- J. First Nations-in-Assembly passed Assembly of First Nations (AFN) Resolution 13/2023, Enforcement of Band Council Resolutions and Bylaws On-Reserve, directing the AFN to advocate to the federal government that it give firm and clear direction to Royal Canadian Mounted Police, provincial, territorial and municipal services

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across Canada, and federal crown prosecutors, that First Nations by-laws enacted through the Indian Act are valid First Nations and federal laws, and must be recognized and enforced by local policing authorities and, where charges are laid and where appropriate, prosecuted by provincial or federal Crown prosecutors.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

1. Direct the Assembly of First Nations (AFN) to call on Canada to work directly with First Nations to support First Nations enforcement of their laws.
2. Direct the AFN to call on Canada to ensure that it treats First Nations laws and self-governance in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples, as specifically required in Section 5 of the Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.
3. Call upon the federal government to support First Nations in exercising jurisdiction over the assertion, practice and enforcement of First Nations laws and legal orders by resourcing extensive First Nations-led engagement on the enforcement of Indigenous laws.
4. Call on the federal government to ensure that any changes to laws and policies, including the Indian Act, be undertaken with the free, prior and informed consent of each Nation.

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