



## What is the history of this issue and how does it impact First Nations?

The Inherent Right to Self-Government Policy (IRSG) is one of the key federal policies which guide Canada's approaches to First Nations self-government agreements in relation to every aspect of First Nations' lives, including but not limited to resources management, land management, hunting, social welfare, and economic development. First Nations have been consistently critical of these policies, particularly the IRSG, as its approach is inconsistent with current legislation and Section 35 constitutional rights, including the full recognition of First Nations' inherent right to their lands, resources, title, and jurisdiction, and often requires a release or surrender of rights. Moreover, these policies have failed to keep pace with Canadian law, are incompatible with the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), and often fail to include adequate resourcing to support final agreements.

With the passage of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) on June 21, 2021, the IRSG continues to be identified as a policy that is clearly inconsistent with the UN Declaration, particularly Articles 18 and 19. This outdated and racist policy must be formally repealed by Canada. First Nations-in-Assembly have passed several resolutions rejecting the IRSG including AFN Resolution 24/2005, *Review of the Federal Comprehensive Claims Policy and the Federal Inherent Right to Self-Government Policy*.

First Nations-in-Assembly have long called for rights-based approaches aligned with legal and political structures and that are consistent with the full recognition of First Nations' inherent rights, title, and jurisdiction. While First Nations have continued to express concern with Canada's approach to self-government tables, consultation and engagements continue to be a federal priority, as evidenced by Minister of Crown Indigenous Relations (CIRNA) Minister Miller's 2021 Mandate Letter whereby the Minister was mandated to "work with Indigenous partners and relevant Ministers to accelerate the Recognition of Indigenous Rights and Self-determination processes..."

The IRSG policy was created in 1995 and has not been repealed or updated by the Crown despite being an unreserved signatory to UN Declaration since 2016 that has now formally committed itself to implementing the UN Declaration with the UNDA. To implement the UN Declaration means respecting First Nations' inalienable right to our distinct self-government models free from colonially imposed policies that limit the scope and content of our sovereignty.

There continues to be a lack of clarity respecting this policy, noting that this policy was formally repealed in British Columbia in 2019 by the *Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia*. This uncertainty on the status of the IRSG and its



influence on Canada’s approach in negotiations with First Nations must be addressed to ensure First Nations are better positioned to achieve the full political and legislative recognition of their inherent rights, title, and jurisdiction.

### How has the AFN’s recent advocacy affected this area?

AFN resolutions clearly reject the IRSG. In 2019, AFN advocacy resulted in Canada committing to continue “ongoing work with First Nations, Inuit, and Métis to redesign the Comprehensive Claims and Inherent Rights Policies.” The AFN’s advocacy throughout 2021-2022 continued to call on the federal government to account for the current status of the IRSG and seek its repeal in a First Nations-led process aligned with the standards of the UN Declaration.

The AFN continues to advocate that Section 5 of the UNDA commits Canada to take ‘all measures necessary’ to ensure consistency of federal laws and policy with the UN Declaration. The UNDA could be a viable mechanism to achieve immediate repeal of this policy as directed by the First Nations-in-Assembly.

The AFN will continue to support First Nations in their strategies and methods of asserting self-determination and self-governance apart from legislated or imposed colonial policy and legislated operatives. The AFN will continue to call on Canada to ensure its efforts are respectful of First Nations’ distinct approaches to asserting their inherent rights to their lands and resources. The AFN continues to action Resolution 25/2019, *Support for a First Nations Led Engagement Process on Nation Building*, calling for a process to replace existing rights-based policies through a First Nations-led process.

### Where do we hope to go in the future?

Canada is committed to ‘reviewing’ the IRSG policy. The AFN is dedicated to supporting the full recognition of First Nations’ inherent rights and the full and meaningful First Nations-led implementation of the UN Declaration. In addition to calling for the immediate repeal of the IRSG using Section 5 of the UNDA, the AFN is considering the implications of an immediate repeal of the IRSG for those First Nations who have completed agreements or are negotiating them with the Crown.

The AFN will continue to explore options to address the consequences the IRSG and develop options for the First Nations-in-Assembly to consider on how redress and compensation, such as loan-forgiveness, might finally overcome the long, dark shadow of this harmful policy. Federal commitment to supporting First Nations in the exercise of their inherent rights must also address



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## ISSUE: INHERENT RIGHT TO SELF-GOVERNMENT POLICY

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the systemic consequences and costs of this policy and support First Nations-led alternatives that respect our rights and honours Canada's commitments.

The AFN will continue to report back on progress via Issue Updates, Annual Reports, Research and Discussion Papers and through First Nations-in-Assembly discussions to inform approaches to eliminating the IRSG and addressing its impacts.