
Assembly of First Nations

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Assemblée des Premières Nations

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**Special Chiefs Assembly
December 7, 8, 9, 2021, Ottawa (Ontario)**

Resolution no. 47/2021

TITLE: Justice for First Nations Recognition and Reserve Land

SUBJECT: Reserve Creation and Recognition

MOVED BY: Chief Calvin Bruneau, Papaschase First Nation, AB

SECONDED BY: Chief Cadmus Delorme, Cowessess First Nation, SK

DECISION Carried; 9 objections; 4 abstentions

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

- i. 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.
- ii. 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.
- iii. Article 8(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.
- iv. 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.

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- v. 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.
- B.** There are numerous First Nations that are not recognized by Canada and do not have reserve land. These First Nations may have been missed by Canada during adhesions to Numbered Treaties, excluded from flawed Treaty-making processes, or wrongfully amalgamated by Canada. Furthermore, several First Nations had their members wrongfully enfranchised, were displaced from their traditional territories, or had their lands unlawfully surrendered by Canada.
- C.** First Nations are adversely impacted by the absence of protections and benefits that come with reserve ownership and federal recognition. These First Nations may be unable to access programs and services provided by the federal government. Additionally, these First Nations are prevented from exercising their inherent rights related to land and self-governance. First Nations who were wrongfully amalgamated by Canada may have reserve land but are unable to exercise their right to self-determination as distinct peoples.
- D.** The Assembly of First Nations (AFN) hosted dialogue sessions in 2017 and 2018 to discuss the issues facing First Nations without a reserve or recognition. Senior federal officials attended these meetings and committed to support the development of a joint process to address First Nations concerns. Despite these commitments, Canada has not created an effective mechanism to provide redress for actions which deprived First Nations of their integrity as distinct peoples and dispossessed them of their lands, territories, and resources.
- E.** The New Bands / Band Amalgamation Policy (NBBA Policy) provides the policy framework for the creation of new bands under section 17 of the *Indian Act*. The NBBA Policy fails to provide a clear, logical, and effective framework for First Nations to obtain recognition, acquire reserve land, and reverse the effects of wrongful amalgamation.
- F.** Neither the *Indian Act* nor the *Addition to Reserve/Reserve Creation Policy Directive* provide adequate mechanisms for the recognition of First Nations or the provision of reserve land to unrecognized groups.
- G.** Without access to an effective redress mechanism, First Nations are forced to engage in costly and prolonged litigation or rely on the political goodwill of the federal government. The lack of any effective policy or legislative framework exacerbates the vulnerable position of these First Nations.

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- H. This is an urgent issue that cuts across various federal government departments. A comprehensive, multi-departmental approach is required to provide redress to First Nations seeking recognition and reserve land.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Direct the Assembly of First Nations (AFN) to call on Canada, in consultation and coordination with affected First Nations, to take a comprehensive approach to addressing the unique issues facing AFN-recognized First Nations without reserve lands or federal recognition, including through the creation of a senior or ministerial level table to oversee efforts to identify and implement targeted solutions within 12 months.
2. Call on Canada to work directly with the AFN and affected First Nations to review and re-design the New Bands / Band Amalgamation Policy (NBBA Policy) as well as other relevant laws and policies.
3. Call on Canada to provide adequate interim funding and resources to affected First Nations while policy and legislative review and re-design is ongoing.
4. Direct the AFN to facilitate the full participation of First Nations in the review and re-design of the NBBA Policy and other relevant laws and policies.
5. Direct the AFN to advocate for sufficient resources to support First Nations' full and equal participation in co-development and engagement processes related to the NBBA Policy and other relevant laws and policies.

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