



# Assembly of First Nations (AFN) Quarterly Report on the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) of Indigenous Peoples Act

*Second Edition | January - April 2024*

## Introduction

The Assembly of First Nations (AFN) are pleased to present the second edition of the AFN Quarterly Report second edition of the Assembly of First Nations (AFN) Quarterly Report on the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA), which aims to provide Chiefs with updates on the progress of its implementation. As directed by Resolution 12/2022, *Call for Full First Nations Participation in the Implementation of the UN Declaration*, the AFN is mandated to provide quarterly updates to all Chiefs on the status of Canada's activities under the consistency of laws provision at Section 5, the progress on the Action Plan development and implementation at Section 6, and the annual reporting process at Section 7 of the Act. This report highlights achievements, challenges, and the path forward in implementing the UNDA.

Read and download the first AFN Quarterly Report on the UNDA here: [December 2023 - First Quarterly Report on the UNDA.](#)



## Update on Funding First Nations' Role in the Implementation of the Action Plan

The 2024 Federal Budget, released on April 16, 2024, did not contain specific measures to support the advancement of Action Plan Measures (APM) with First Nations. The AFN had advocated for \$1.516 billion over the next five years in its 2024 Pre-Budget Submission. This funding was intended to support rights-based consultation, policy development, and First Nations' monitoring of UNDA coordinating activities carried out by the Government of Canada.

The AFN continues to advocate for sufficient funding to ensure First Nations can participate in the co-implementation and oversight of APM priorities, in accordance with First Nations rights recognized and protected by the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration).

## Progress on the Action Plan

### Progress of Key Action Plan Measures (APMs):

Since the enactment of the UNDA on June 21, 2021, Canada has not identified a process to work with First Nations to align its laws and policies with the articles of the UN Declaration. The Action Plan, developed with input from First Nations and the AFN, covers the period from 2023 to 2028 and includes 181 Action Plan Measures across five chapters.

### Non-Derogation Clause

Action Plan Measure 2 requires Canada to identify and prioritize existing federal statutes for review and possible amendment, including a non-derogation clause in the *Interpretation Act*. Generally, a non-derogation clause states that legislation should not be interpreted in ways that would negatively affect the constitutional rights of Indigenous Peoples.

On June 8, 2023, Bill S-13, *An Act to amend the Interpretation Act and to make related amendments to other Acts*, was introduced in the Senate. The bill amends the federal Interpretation Act to include a non-derogation clause that upholds the Aboriginal and Treaty rights of Indigenous Peoples, as recognized and affirmed by Section 35 of the *Constitution Act 1982*. The bill aims to ensure that all federal legislation is interpreted to uphold constitutionally protected and Treaty rights. The AFN intervened in the Senate to advocate for extending the non-derogation clause to ensure its consistency with the UN Declaration in all enactments. In addition to providing technical input to the Department of Justice in January 2024, the AFN provide oral testimony to the Standing Committee in the fall of 2023 to raise concerns that the bill must go farther to meet the standards outlined in the UN Declaration. Cheryl Casimer, an Executive Member of the First Nations Summit, appeared on behalf of the AFN. In January 2024, the AFN released a position paper titled '[Statutory interpretation of federal laws](#),' providing suggested amendments to Bill S-13.

Bill S-13 completed its first reading in the House of Commons on February 27, 2024.



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## Recent Court Decisions Relevant to the UN Declaration

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Recent court rulings have played an important role in shaping the implementation of UN Declaration in Canada.

### **An Act respecting First Nations, Inuit and Métis Children, youth and families, 2024 SCC 5**

On February 9, 2024, the Supreme Court of Canada (SCC) upheld the constitutionality of the federal government's legislation, An Act respecting First Nations, Inuit and Métis children, youth and families (the "Act"). This decision followed a reference from the Court of Appeals for Quebec, which had found certain provisions in the clause were unconstitutional and breached Quebec's jurisdiction. The SCC found that the Act falls within Canada's jurisdiction over "Indians, and Land reserved for the Indians" as outlined in section 91(24) of the Constitution Act, 1867. The Court also confirmed Parliament's right to recognize and affirm in legislation, Indigenous rights to self-government over children and family welfare. However, the SCC was clear that Parliament's legislative affirmation does not mean these rights are constitutionally protected. The SCC declined to determine if Section 35 protects an Indigenous right to self-government.



Legal interpretation inconsistencies are evident, especially in cases like the Declaration on the Rights of Indigenous Peoples Act (DRIPA) in British Columbia (B.C.), where weak interpretation has led to poor implementation. The absence of clear interpretive provisions in UNDA and DRIPA demonstrates the need for legislative amendments to ensure alignment with the UN Declaration principles. Recent court decisions, exemplified by litigations such as the Canadian Human Rights Tribunal's ruling on discriminatory child welfare funding, the Quebec Court of Appeal's interpretation of self-government rights, and the Supreme Court of Canada's recognition of the UN Declaration incorporation into domestic law, have offered direction. These rulings underscore the shifting legal landscape and emphasize the need of harmonizing domestic legislation with the UN Declaration principles.

## Events

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The AFN is planning a gathering to bring First Nations together with experts, academics, and youth together to share knowledge and provide updates on the implementation status of the UNDA. More information will be shared once the event details are finalized.

## Next Steps

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Moving forward, concerted efforts are needed to strengthen the implementation of the UNDA. This includes enhancing reporting processes, developing indicators to measure progress, and fostering dialogue between First Nations leadership and government officials. Additionally, hosting gatherings to facilitate knowledge sharing and updates on implementation will help improve collaboration and coordination. Addressing funding gaps, enhancing First Nation participation, and encouraging interdepartmental collaboration are essential for achieving the objectives of the UNDA.

## Conclusion

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Progress has been limited, and numerous challenges remain in fully implementing the UNDA. Significant advancements are unlikely until First Nations receive adequate funding to engage in this work. Stay tuned for the next quarterly report, which will explore further progress on key Action Plan Measures and relevant case law related to the UN Declaration.