
Assembly of First Nations

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Assemblée des Premières Nations

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SPECIAL CHIEFS' ASSEMBLY
APRIL 3, 4, 5 & 6, 2023; OTTAWA, ON

Resolution no. 20/2023

TITLE: United Nations Declaration on the Rights of Indigenous Peoples Act Draft National Action Plan

SUBJECT: United Nations Declaration on the Rights of Indigenous Peoples

MOVED BY: Chief Wilfred King, Kiashke Zaaging Anishinaabek First Nation (Gull Bay First Nation), ON

SECONDED BY: Chief Lisa Robinson, Wolf Lake First Nation, QC

DECISION Carried; 1 opposition

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly of the United Nations in 2007.
- B. Canada endorsed the UNDRIP without qualification in 2016.
- C. In 2021, the Government of Canada enacted Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP Act).
- D. Section 5 of the UNDRIP Act provides:
 - i. 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.
- E. Section 6 of the UNDRIP Act provides:
 - i. 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.
 - ii. 6 (2) The action plan must include:

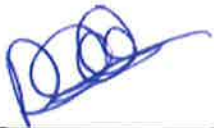
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- a. measures to:
 - i. address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, 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.
 - iii. 6 (3) The action plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan.
 - iv. 6 (4) The preparation of the action plan must be completed as soon as practicable, but no later than two years after the day on which this section comes into force.
 - v. 6 (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.
 - vi. 6 (6) After the action plan is tabled, the Minister must make it public.
- F. Pursuant to Section 7 of the UNDRIP Act, the Government of Canada submitted a report to Parliament on June 2022, indicating the following:
- i. "Early work in implementation has concentrated on how to support Indigenous-led capacity to participate in the co-development of the action plan, including the identification of measures to ensure the consistency of federal laws with the UN Declaration. As part of this collaborative work, approximately \$23.6 million in funding was made available to support Indigenous participation in the engagement process, including support for Indigenous-led consultations. A call for proposals was undertaken from December 2021 to April 2022, with a goal to support a broad range of Indigenous rights holders, representative organizations and groups. Funding will help support Indigenous partners in conducting research and analysis and consulting their members and citizens to identify priorities. Two hundred and eight (208) proposals were received, and of these, 147 have been approved. Indigenous-led engagement sessions will take place over the summer and early fall of 2022."
- G. On March 20, 2023, the Department of Justice released *What We Learned to Date: Report on the Implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act* and the Draft UNDRIP Act National Action Plan.

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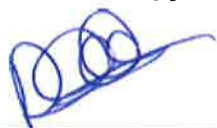


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- H. Pursuant to Section 6, the Action Plan must be tabled with Parliament by June 21, 2023.
- I. The call for proposals issued by the Government of Canada was limited to those First Nations and Indigenous organizations which had participated in the shortened consultation process which occurred prior to the enactment of the UNDRIP Act, excluding the vast majority of First Nations in Canada, and thereby denying them the opportunity to participate in the consultation process leading up to the tabling of the Action Plan with Parliament.
- J. Only \$7.35 million in consultation funding was allocated to First Nations, with the remaining \$16.25 million being allocated to Indigenous organizations which are not rights holders, thereby making the allocation of funding inconsistent with Section 6 of the UNDRIP Act, which requires the Government to draft the Action Plan in consultation and cooperation with Indigenous Peoples and with the spirit of the Act and the United Nations Declaration.
- K. The Department of Justice, tasked with drafting the Action Plan, has established an unreasonably shortened timeline for community engagement and consultation. The timeline has not been adjusted, in spite of the Government's failure to release the Draft Action Plan by the date provided for in the timeline, thereby depriving First Nations of the opportunity to conduct meaningful community engagement and consultation. This has resulted in grossly inadequate time to provide feedback on the Draft UNDA National Action Plan.
- L. This conduct by the Department of Justice is in direct contravention of the Government's obligations under Section 6 of the UNDRIP Act, as well as in contravention of its duty to consult and accommodate under Section 35 of the Constitution Act, 1982.
- M. The Government of Canada must acknowledge that First Nations need not negotiate their rights, whether under the UNDRIP Act action plan or otherwise.
- N. The draft Action Plan signals the ineffectiveness of the federal government to envision reconciliation that includes the full recognition of First Nations inherent and Treaty rights, title, and jurisdiction or to push past the status quo of contingent and limited governing authority for First Nations governments.
- O. Implementation of the Articles of the UNDRIP, contained within the UNDRIP Act, and the affirmation of First Nations Inherent and Treaty rights, title, and jurisdiction requires whole of government approaches that support First Nations free, prior, and informed consent. The Draft National Action Plan contains many gaps and omissions that must be addressed, including but not limited to the incorporation of the Truth and Reconciliation Commission (TRC) Report's Calls to Action, recognition of First Nation land rights, including unceded lands, and the absence of any measures to rescind the application of the Doctrine of Discovery in law, including the common law's interpretation of Section 35 of the *Constitution Act, 1982*.

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- P. The UNDRIP Act requires Canada to continue to work with First Nations rights holders and their representative institutions and organizations as identified by First Nations rights holders, including in all efforts to amend and/or review any future National Action Plans.
- Q. An amendment to the UNDRIP Act would be required in order to extend the date for tabling the Action Plan with Parliament.

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

1. Call upon the Government of Canada to proceed without delay to amend the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP Act), for tabling the Action Plan with Parliament annually, in order that Indigenous Peoples be consulted and accommodated pursuant to Section 6(1) of the UNDRIP Act and Section 35 of the *Constitution Act, 1982*.
2. In the event that the Government of Canada is unwilling or unable to amend Section 6 (4) of the UNDRIP Act, direct the Assembly of First Nations (AFN) to:
 - a. Call on the Government of Canada to commit to amending the Action Plan annually after June 21, 2023, following consultation that meets the requirements of the UNDRIP Act, and First Nations Inherent and Treaty rights, title and jurisdiction.
 - b. Call upon the Government of Canada to ensure additional funds and resources be made available to all First Nations who wish to participate in the consultation of the Action Plan, in order to meet the requirements of free, prior, and informed consent as per Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples and the duty to consult and accommodate.
3. Call on the Government of Canada to continue to consult and cooperate with First Nations title and rights and treaty holders and their representative institutions, where mandated by the First Nation, to review and co-develop amendments to the National Action Plan in order to address the gaps that have been identified by First Nations. This process must be supported by a national oversight body with representation from First Nations and Crown governments, to ensure transparency and the incorporation of First Nations submissions on the National Action Plan.
4. Support First Nation and region-specific approaches that uplift First Nations right-holders and advance the implementation of the Declaration based on ongoing work, identified priorities and positions in relation to the UNDRIP Act, and the National Action Plan.
5. Call on the Department of Justice to provide a copy of all the proposals it has reviewed and approved, without restrictions, to the Assembly of First Nations.

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