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**FEDERAL LEGISLATION TO IMPLEMENT *UN DECLARATION* MAJOR STEP
TOWARD ADDRESSING RACISM AND DISCRIMINATION IN CANADA**

(Ottawa, ON) – Assembly of First Nations (AFN) National Chief Perry Bellegarde welcomes the passing of a federal bill to advance the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, urging its full implementation in Canada to meet standards necessary for the dignity, survival, and well-being of Indigenous peoples.

“This is a major step forward for First Nations and for Canada - this is concrete action, this is history in the making,” said AFN National Chief Perry Bellegarde, adding the passing of this federal legislation comes after decades of advocacy by First Nations and indigenous peoples worldwide. “This legislation to implement the *UN Declaration on the Right of indigenous Peoples* in Canada can be a pathway to reconciliation, guided by our inherent and Treaty rights. Its full implementation will see First Nations rights respected and implemented and is essential to addressing all forms of racism and discrimination in Canada.”

The *United Nations Declaration on the Rights of Indigenous Peoples Act* passed June 16 by the Senate of Canada, will require the federal government to work collaboratively with First Nations and other Indigenous peoples to develop a National Action Plan to implement the *UN Declaration*, including measures to address prejudice and eliminate all forms of violence and discrimination against Indigenous peoples. While the *UN Declaration* already has legal effect in Canada, this new legislation requires that Canadian laws be reviewed and reformed in order to meet Canada’s international human rights obligations and explicitly rejects the racist doctrines of discovery and terra nullius. It also requires regular reporting to Parliament on progress.

“The passing of bill C-15, now the *United Nations Declaration on the Rights of Indigenous Peoples Act*, means we now have a process that requires laws and policies to change so that First Nations rights are respected and implemented,” said National Chief Bellegarde. “First Nations will determine their own priorities and how they wish to work

with Canada. And I urge all governments in Canada to work to ensure full implementation of the UN Declaration on the Rights of Indigenous Peoples.”

The implementation of the *UN Declaration on the Rights of Indigenous Peoples* by all levels of government, including developing a national action plan, strategies, and other concrete measures to achieve the goals set out in the *Declaration*, is the focus of two of the Truth and Reconciliation Calls to Action and is also included in the Calls for Justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

The AFN is the national organization representing First Nations people in Canada. Follow AFN on Twitter @AFN_Updates.

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BACKGROUND

The *United Nations Declaration on the Rights of Indigenous Peoples Act* (formerly Bill C-15) was passed by the Parliament of Canada and will soon receive Royal Assent.

This historic achievement is the product of decades of advocacy by First Nations leadership, internationally and in Canada, to ensure respect and implementation of the human rights of Indigenous peoples.

The Act provides explicit recognition of Canada's obligation to respect and promote the inherent rights of Indigenous peoples, affirmed in the *UN Declaration*, including the right of self-determination. The urgent need to respect and promote the Treaty rights of Indigenous peoples is repeatedly affirmed to have Treaties respected and enforced. The *Declaration* contains international human rights standards that Canada and all members of the UN have affirmed, and re-affirmed, many times.

The Act does not take away or diminish any rights. This is all about taking long overdue action to respect and implement rights that First Nations already have.

Importantly, the Act requires the federal government to work with Indigenous peoples to reform the laws of Canada and develop a National Action Plan for the full implementation of the *Declaration*.

What does the Act do?

The Act requires the federal government to “work in consultation and cooperation” with Indigenous peoples to ensure that the laws of Canada are consistent with the minimum human rights standards affirmed in the 2007 *UN Declaration on the Rights of Indigenous Peoples*. The federal government must now work cooperatively with Indigenous peoples to ensure that federal laws, policies and operational practices meet these minimum human rights standards.

The Act explicitly confirms that the *UN Declaration* is to be used to interpret Canadian laws. (Canadian courts already have been using the *Declaration* in exactly this way.) The new Act will promote greater compliance and awareness of the work required to respect and implement the human rights of Indigenous peoples.

The Act requires the Government of Canada to “take all measures necessary to ensure that the laws of Canada are consistent with the *Declaration*.” This requirement has immediate effect. Government officials must make every effort to interpret and apply Canada's laws in a way that is consistent with the provisions of the *Declaration*. This requirement should inform and shape the positions taken by the federal government in negotiations and in court. There must also be a formal process to review laws and bring them back to Parliament to be repealed or reformed.

The Act also requires that the federal government “must...prepare and implement an action plan to achieve the purposes of the *Declaration*.” Such an Action Plan is to include concrete actions to ensure the human rights of Indigenous peoples are respected and implemented.

In all these measures, the Act states that the government must work in “consultation and cooperation” with Indigenous peoples. The Act also requires regular reports to Parliament that will be made public. In addition, the Act commits the government to explore additional accountability measures.

AFN’s expert legal advisors have confirmed that nothing in the Act can be used to take away, diminish or unilaterally redefine any rights of Indigenous peoples.

Why is implementation of the *UN Declaration* important?

The *Declaration* is a global human rights instrument setting out the “minimum standards for the survival, dignity and well-being of Indigenous peoples.” All governments are expected to uphold and implement the provisions of the *Declaration*.

The *Declaration* was adopted by the UN General Assembly more than 13 years ago, on September 13, 2007. The *Declaration* was intended to close a critical gap in the international human rights system by explicitly affirming a wide range of universal human rights that have, in practice, been widely denied to Indigenous peoples. This includes the right to self-determination and collective rights to lands, territories and resources, environmental protection, spirituality, culture, and identity.

The *Declaration* is especially important because Indigenous peoples were active partners in its drafting. This included First Nations leaders and grassroots advocates.

The Truth and Reconciliation Commission of Canada (TRC) called the *Declaration* “the framework for reconciliation.” Canada embraced all of the TRC Calls to Action. Both the TRC and the National Inquiry on Missing and Murdered Indigenous Women and Girls called for Canada to implement the *Declaration* through law, policy, and collaborative action.

What does it mean to say that the *UN Declaration* “has legal effect” in Canada?

Canadian courts regularly use international human rights instruments to interpret domestic law. Courts and human rights tribunals are already using the *UN Declaration* in exactly that way.

In addition, the *Declaration* consolidates international standards that are already legally binding on governments in Canada. These standards include those previously set out in international conventions to which Canada is a party and those that have emerged as part of what is known as “customary international law”.

For example, the right to self-determination is affirmed in both the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. The prohibition against racial discrimination is elaborated in the *International Convention on the Elimination of All Forms of Racial Discrimination*.

What will be in the National Action Plan?

The Act states that the action plan must include measures to:

- “address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination”
- “promote mutual respect and understanding as well as good relations, including through human rights education”; and
- “measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the *Declaration*.”

As the Act sets out, the content of the National Action Plan must be developed in consultation and cooperation with First Nations, Inuit and Métis peoples. Such actions must take into account a distinctions-based approach.

Why is the preamble to the Act important?

The preamble in any law in Canada is a tool that can be used to interpret and apply its operative provisions. In other words, preambles have legal effects.

The new Act has a very robust preamble. A number of the clauses in the preamble are worth highlighting, including the following:

- Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and *terra nullius*, are racist, scientifically false, legally invalid, morally condemnable and socially unjust;
- Whereas the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;
- Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government;

- Whereas there is an urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements, and those treaties, agreements and arrangements can contribute to the implementation of the *Declaration*;
- And whereas measures to implement the *Declaration* in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge.

What is the relationship between Bill C-262 and the new Act?

Bill C-262 was a private Member's bill advanced by former Member of Parliament Romeo Saganash. Bill C-262 was passed by the House of Commons in 2018 but was blocked by the stalling tactics of a few Senators. C-262 was never brought to a final vote in the Senate.

The essential elements of the new Act – affirmation of the *Declaration's* legal affect and the commitment to law reform, creation of a national action plan, reporting to Parliament and collaboration with Indigenous peoples – are like those of Bill C-262. However, the new Act uses C-262 as the “floor”, but not the ceiling.

Where did the Act come from?

For many years, First Nations have advocated for federal legislation to affirm the rights in the *UN Declaration* and ensure their implementation through a jointly developed action plan.

Romeo Saganash's private Member's bill to implement the *UN Declaration*, Bill C-262, was broadly supported by First Nations. Chiefs-in-Assembly had passed a resolution calling on Parliament to adopt Bill C-262. When Bill C-262 was blocked by filibuster tactics in the Senate, AFN Chiefs-in-Assembly passed a resolution in December 2019 calling for a government bill modelled on Bill C-262 to be introduced to Parliament within a year. AFN Resolution 86-2019 states that a government implementation bill must be at least as strong as Bill C-262.

Commitments to develop such legislation were made by Canada in the 2019 and 2020 Speeches from the Throne. Federal Justice Minister David Lametti tabled Bill C-15 on December 3, 2020, following a short engagement period.

Discussions over the Bill took place at AFN's AGA in December 2020 as well as a two-day National First Nations Leadership Forum on Bill C-15 on February 10-11, 2021. Hundreds of First Nations leaders discussed this important legislation from a diversity of perspectives.

C-15 built on the foundation of C-262, while adding greater detail and clarity as well as a more robust preamble. The AFN's team of expert legal advisors concluded Bill C-15 met the mandate to support government legislation that would be at least as strong as Bill C-262. In fact, C-15 is stronger than former Bill C-262 in several ways.

Input from the AFN and others during Parliamentary hearings calling for amendments, responsive to First Nations concerns, resulted in these improvements.

What amendments were made to the Act during the Parliamentary process?

In response to concerns raised by First Nations, the House of Commons Standing Committee on Indigenous and Northern Affairs adopted a number of amendments to clarify and strengthen Bill C-15.

- The deadline for creating a National Action Plan was shortened from three years to two years.
- In the clause on the National Action Plan, and in the preamble, where the Bill originally referred to eliminating violence and all forms of discrimination, the Act was amended to also explicitly include systemic racism.
- In the preamble, where the Act rejects all doctrines of superiority, the Act was amended to add specific reference to the doctrines of discovery and *terra nullius*.
- Where the preamble refers to section 35 of the *Constitution Act, 1982* and the underlying constitutional principle and value of protecting Aboriginal and Treaty rights, the following statement was added: "Canadian courts have stated that such rights are not frozen and are capable of evolution and growth."
- A grammatical amendment was made: where the English version of the Bill originally referred to its "purpose" – even though there were two separate purposes named – the Act says "purposes."

What happens next?

Given that there is a two-year deadline for completing the first National Action Plan, the federal government should immediately engage with First Nations to develop an inclusive process consistent with the requirements of the *Declaration* itself.

Passage of the Act also establishes an immediate obligation for the federal government to ensure that its laws are consistent with the *UN Declaration*. This should be reflected in the positions taken by the federal government in negotiations and in court and the need to undertake a joint law and policy review with First Nations to identify where federal law, policy and operational practices do not align with the minimum standards of the *UN Declaration*.