



March 10, 2015

Mr. Romeo Saganash, MP
Abitibi-Baie-James-Nunavik-Eeyou
House of Commons, Confederation Building
Ottawa, Ontario K1A 0A6

Dear Mr. Saganash:

I am writing today to offer my unqualified support for Bill C-641, *An Act to Ensure the Laws of Canada are in Harmony with the United Nations Declaration on the Rights of Indigenous Peoples*. For the reasons outlined below, the Assembly of First Nations strongly recommends approval of Bill C-641 – the *United Nations Declaration on the Rights of Indigenous Peoples Act*. We urge all Members of Parliament to vote unequivocally in favour of the adoption of this Bill.

- 1. Prior Canada-Indigenous collaboration.** For over 30 years, Indigenous peoples in Canada and worldwide have been involved in the formulation, adoption and implementation of the *UN Declaration*. In the final years of negotiations, the Canadian government played a key role together with Indigenous peoples in crafting texts on the right of self-determination; Treaties; and the comprehensive balancing provisions for interpreting all provisions in the *Declaration*.
- 2. Consensus human rights instrument.** The *Declaration* is currently a consensus international human rights instrument. No country in the world formally objects to it. The *UN Declaration* is included in the list of "Universal Human Rights Instruments" on the web site of the Office of the UN High Commissioner for Human Rights (OHCHR). The Rule of Law Unit of the UN Secretary-General includes the *Declaration* as a key instrument.
- 3. Comprehensive balancing provisions.** The *Declaration* includes one of the most comprehensive balancing provisions in any international human rights instrument. Every provision in the *Declaration* must be interpreted in accordance with the "principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith". These are the same core principles as in the Canadian and international legal systems. These are also the same principles that have been denied Indigenous peoples throughout history.

.../2

4. **Canada's obligations.** The *Declaration* stipulates in article 38: "States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration." Article 42 adds: "States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration."

5. In April 2008, a Motion was adopted by the House of Commons that called for the government to endorse the *Declaration* and that "Parliament and Government of Canada fully implement the standards contained therein." Bill C-641, if adopted, would serve to ensure that such implementation is realized.

6. **Canada's endorsement.** In its November 2010 endorsement of the *Declaration*, the federal government concluded: "We are now confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework."

7. In February 2012, the Canadian government conceded to the UN Committee on the Elimination of Racial Discrimination in Geneva that the *UN Declaration* could be used to interpret domestic laws – including Canada's Constitution. This would include Aboriginal and Treaty rights recognized and affirmed in section 35 of the *Constitution Act, 1982*.

8. The *Declaration* recognizes the "urgent need to respect and promote the inherent rights of indigenous peoples". Following his October 2013 visit to Canada, former Special Rapporteur on the rights of indigenous peoples, James Anaya, concluded in his 2014 Report to the UN Human Rights Council:

Canada faces a continuing crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginals claims remain persistently unresolved, indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among indigenous peoples toward government at both the federal and provincial levels.

9. **UN Declaration – a principled framework.** In addressing the human rights challenges and injustices facing Indigenous peoples, Anaya also concluded: "The United Nations Declaration on the Rights of Indigenous Peoples, which has been endorsed by Canada, provides a common framework within which the issues faced by indigenous peoples in the country can be addressed." In his 2014 Report relating to Canada, Anaya makes repeated references to the "human rights situation" of Indigenous peoples and their "human rights concerns" – as well as "devastating human rights violations" in relation to residential schools, the "sixties scoop" of Indigenous children, exclusion of access to lawyers and Canadian courts for grievances relating to Indigenous lands, and many other critical contexts.

.../3



10. **Importance of human rights-based approach.** In accordance with the *Charter of the United Nations* and modern international law, Canada and other States have a duty to respect and protect human rights without discrimination. The *UN Declaration* affirms that the "human rights ... of all shall be respected" (arts. 46(2) and (3)).

11. In its 2013 "Core Document" forming part of its reports to UN human rights treaty bodies, Canada includes Aboriginal and Treaty rights in section 35 under the heading "Legal framework for protecting human rights at the domestic level".

12. Globally, the *UN Declaration* is recognized as an instrument of justice and reconciliation. In July 2012, the Canadian Association of Statutory Human Rights Agencies (CASHRA) has called on "all levels of government across Canada to implement the UN Declaration on the Rights of Indigenous Peoples." CASHRA members include the Canadian Human Rights Commission and most provincial and territorial human rights commissions.

13. **Redressing urgent human rights issues.** In regard to murdered and missing Indigenous women, the *UN Declaration* is particularly instructive: "States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination" (art. 22(2)).

14. **Indigenous peoples' consent.** The federal government claims it has concerns with "free, prior and informed consent" when used as a veto. However, the term "veto" is never used in the *UN Declaration* and the government has refused to indicate what the term means. The term "veto" implies an absolute power, i.e. an Indigenous people could block a proposed development regardless of the facts and law in any given case. However, human rights, including the rights of Indigenous peoples, are generally relative and not absolute.

15. In *Tsilhqot'in Nation v. British Columbia*, the Supreme Court of Canada highlighted Indigenous "consent" in 9 paragraphs; "right to control" the land in 11 paras.; and "right to determine" land uses in 2 paras. The Court added that the "right to control" means that the governments and others seeking to use the land must obtain the consent of the Aboriginal title holders. Such paras. are consistent with Indigenous peoples' right to development and right to self-determination in international law. Such rulings of Canada's highest court must be respected.

16. "Consent" is not limited to Aboriginal title and applies to other Aboriginal rights. As described in 2004 by the Supreme Court in *Haida Nation v. British Columbia (Minister of Forests)*, the high end of the spectrum of consultation requires "full consent of [the] aboriginal nation' on very serious issues."

.../4

17. The *UN Declaration* did not create the standard of free, prior and informed consent as it applies in Canada. The Supreme Court of Canada raised "consent" in *Delgamuukw v. British Columbia* over seventeen years ago. In the past ten years, the number of First Nation-industry partnerships have steeply risen, suggesting that recognition and implementation of a requirement for full consent can enhance sustainable development, environmental safeguards and well-being for all.

18. In his 2014 report on Canada, former Special Rapporteur Anaya concluded: "In accordance with the Canadian constitution and relevant international human rights standards, as a general rule resource extraction should not occur on lands subject to aboriginal claims without adequate consultations with and the free, prior and informed consent of the indigenous peoples concerned." (para. 98)

19. **Business and human rights.** The "Guiding Principles on Business and Human Rights", endorsed by the UN Human Rights Council in 2011 by consensus, affirms: "The responsibility of business enterprises to respect human rights refers to internationally recognized human rights". In the UN Global Compact's 2013 *Business Reference Guide* on the *UN Declaration*, it is affirmed: "The concept of free, prior and informed consent ("FPIC") is fundamental to the *UN Declaration* as a measure to ensure that indigenous peoples' rights are protected." The *Business Reference Guide* adds:

FPIC should be obtained whenever there is an impact on indigenous peoples' substantive rights (including rights to land, territories and resources, and rights to cultural, economic and political self-determination). (p. 26)

20. **Cooperative federalism must apply to Indigenous peoples.** Reconciliation is an ongoing process that requires effective and ongoing Crown-Indigenous peoples cooperation. The Supreme Court of Canada has ruled that the underlying constitutional principle of federalism demands nothing less than cooperation. Cooperative federalism must include federal, provincial and Aboriginal governments. In regard to its implementation, the *UN Declaration* requires States – as a minimum standard – to take measures "in consultation and cooperation with Indigenous peoples" (arts. 38, 43). The preamble of the *Declaration* emphasizes:
Treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States.


21. As indicated in its preamble, the *UN Declaration* was solemnly proclaimed "as a standard of achievement to be pursued in a spirit of partnership and mutual respect". Adoption of Bill C-641 provides a crucial opportunity for the federal government to engage in genuine partnership with Indigenous peoples.

.../5

22. Canada currently lacks an effective strategy for implementation of inherent Aboriginal and Treaty rights. The *UN Declaration* provides a principled and balanced legal framework for development of laws, policies and judicial decisions to implement First Nations rights, consistent with Canada's international obligations. In September 2014, at the UN General Assembly, all States committed to develop National Action Plans to implement the *UN Declaration* in cooperation with Indigenous peoples. Bill C-641, if passed and implemented, could substantially contribute to that commitment.

In recent years, Canada has ranked between sixth and eighth on the UN Human Development Index while First Nations have been estimated to fall at 63rd or lower depending on the year. The *UN Declaration* offers a principled framework for closing the gap between First Nations and Canadians in a manner, which both implements our collective rights and uplifts our economic, social and cultural conditions. The UN Declaration is not just an instrument for indigenous peoples – improving living conditions for First Nations will uplift all Canadians and usher in a new era of prosperity for all. Again, the Assembly of First Nations commends your efforts and offers our support for Bill C-641.

Yours sincerely,


Perry Bellegarde
National Chief