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## Assembly of First Nations

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## Assemblée des Premières Nations

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**SPECIAL CHIEFS ASSEMBLY**  
**May 1 & 2, 2018, Gatineau, QC**

**Resolution no. 08/2018**

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<b>TITLE:</b>	<b>Implementing Canada's Recognition and Implementation of Indigenous Rights Framework and clarifying the role of the AFN</b>
<b>SUBJECT:</b>	Legislation
<b>MOVED BY:</b>	Chief Mike McKenzie, Innu Takuaikan Uashat mak Mani-Utenam, QC
<b>SECONDED BY:</b>	Chief Jackie Thomas, Saik'uz First Nation, BC
<b>DECISION:</b>	Carried; 7 Objections; 4 Abstentions

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**WHEREAS:**

- A. Since time immemorial the Indigenous Peoples of Turtle Island, as original sovereign nations, exercised their jurisdiction and authority over their lands, environments, resources and people with their inherent governmental authorities.
- B. Indigenous Peoples and nations have never relinquished their jurisdictions, powers, authorities, identities, rights and Treaty rights through conquest, discovery, *terra nullius*, domination, force or acquiescence.
- C. As original sovereign nations our ancestors in the past and into modern times, practiced their Treaty making rights to enter into Treaties, and other constructive agreements, among themselves and with the Crown.
- D. As a result of Indigenous Peoples' nationhood and inextricable connection to the land, Indigenous nations possess a permanent sovereignty, while Canada occupies and enjoys a lesser established sovereignty.

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**PERRY BELLEGARDE, NATIONAL CHIEF**

**08 - 2018**

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- E. Treaty First Nations possess and continue to maintain valid, legally enforceable Treaty and Treaty rights under international law.
- F. Treaty First Nations are the original parties to Treaties, and Canada has successor state status as described in the United Nations' Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations released and adopted on July 20, 1999.
- G. In accordance with international law, Canada cannot define, interpret, diminish or justify its failure to perform a Treaty or its legal obligations under Treaty.
- H. Canada's engagement on the Recognition and Implementation of Indigenous Rights Framework (the Framework) is an internal process specific to the Government of Canada to reform its laws and policies.
- I. Treaties embody the right to free, prior, and informed consent and the right to participate in decision-making at all levels and in all matters affecting and impacting Indigenous People.
- J. The United Nations Declaration on the Rights of Indigenous Peoples (the 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 5: Indigenous Peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
  - 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.
  - 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.
  - vi. Article 26 (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

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- vii. Article 37 (1): Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
- viii. Article 37 (2): Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.
- ix. 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.

**K. The Truth and Reconciliation Commission of Canada Calls to Action states:**

- i. Calls to Action (45): We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:
  - i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.
  - ii. Adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
  - iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
  - iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.

- L. On May 10, 2016, at the opening of the 15th session of the United Nations Permanent Forum on Indigenous Issues, Minister Carolyn Bennett announced, on behalf of Canada, that Canada is now a full supporter of the UN Declaration without qualification. Subsequently, on February 14, 2018, the Government of Canada reaffirmed its full support for the UN Declaration, without qualification, and committed to its full implementation, including government support for Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*.

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- M.** In September 2017, before the United Nations General Assembly, Prime Minister Justin Trudeau acknowledged that the UN Declaration is not merely “aspirational”.
- N.** Also, in his February 14, 2018, speech to the House of Commons, Prime Minister Justin Trudeau announced that the Government of Canada is launching a national engagement strategy to develop a Recognition and Implementation of Indigenous Rights Framework (the Framework). Specifically, Prime Minister Trudeau stated:
- “...that the government will develop, in full partnership with First Nations, Inuit, and Métis people, a new recognition and implementation of Indigenous rights framework that will include new ways to recognize and implement Indigenous rights. This will include new recognition and implementation of rights legislation. Going forward, recognition of rights will guide all government interactions with Indigenous peoples. The contents of the framework that we build together will be determined through a national engagement led by the Minister of Crown-Indigenous Relations and Northern Affairs with support from the Minister of Justice.”
- O.** The current federal engagement materials regarding the Framework were launched without adequate participation and direction by First Nations rights holders. Additionally, through the inclusion of other partners and stakeholders, current engagement by the Government of Canada does not adequately respect First Nations rights holders.
- P.** Feedback from early engagements indicate that First Nations rights holders have:
- i. Expressed concern about the current process lacking accountability and transparency, with the Government of Canada acting unilaterally.
  - ii. Reiterated that inherent Aboriginal and Treaty rights are constitutionally protected and guaranteed to First Nations, rather than political organizations and that it is the duty of the Crown to consult directly with rights holders in order to obtain their free, prior and informed consent when contemplating actions affecting them.
- Q.** Government engagement processes with non-rights holders and organizations, such as the Assembly of First Nations (AFN), do not constitute consultation and accommodation and cannot be used to obtain free, prior and informed consent.

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

1. Declare that the Assembly of First Nations (AFN), as an advocacy body, and any regional organizations cannot negotiate any binding changes to Canada's federal laws, policies and operational practices as part of the Recognition and Implementation of Indigenous Rights Framework (the Framework).

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2. Call on Canada to work with First Nations before adopting and implementing any legislative or administrative measures that may affect First Nations in order to obtain their free, prior and informed consent.
3. Call on Canada to:
  - a. Rename the Framework to "Protection and Affirmation of Rights and Title Framework".
  - b. Ensure that all phases of its process, in regard to its Framework, are guided by the standards set out in the United Nations Declaration on the Right of Indigenous Peoples (UN Declaration), the American Declaration on the Rights of Indigenous Peoples and the United Nations Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations.
  - c. Work closely with First Nations to ensure that the engagement materials are informed, sufficient, accessible and transparent.
  - d. Provide the necessary non-repayable financial contributions directly to First Nations as the rights holders, to support their ability and capacity to lead efforts to meaningfully and directly engage the federal government on the Framework, related activities and initiatives, including federal legislation.
4. Call on Canada to honour its constitutional obligations and commitments to the full implementation and affirmation of inherent rights, Treaty Rights and title.
5. Call on Canada to completely repudiate and abandon the inherent rights policy and any related operating practices.
6. Call on the Governor General to acknowledge its role as the sole representative of the Crown and to participate in First Nations-led agendas when requested by First Nations.
7. Direct the Assembly of First Nations (AFN) to take appropriate measures to ensure that its organization, executive and administration are in compliance with the UN Declaration in its relationships with First Nations, all levels of governments and international entities.

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