



National Chief Bulletin

November 16, 2020

Update on federal engagement for a Bill to advance implementation of the Declaration on the Rights of Indigenous Peoples

SUMMARY

- In early October, the federal Department of Justice (DoJ) initiated an engagement process respecting a proposed federal Bill to advance implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).
- The focus of federal engagement with First Nations has been on a draft bill closely based on former private member's Bill C-262 (United Nations Declaration on the Rights of Indigenous Peoples Act), with a few technical amendments. (See Attachments 1-English and 2-French)
- On September 23, 2020 a briefing package was provided to the AFN Executive flagging that the launch of federal engagement with First Nations organizations was imminent. The federal engagement process has been extended into November.
- On November 12, 2020, DoJ hosted an 'Ad Hoc Table of Federal-Provincial-Territorial Ministers and Indigenous Leaders on the UN Declaration on the Rights of Indigenous Peoples'. I attended this meeting, along with several First Nations leaders, federal-provincial-territorial representatives and the national leadership of ITK and MNC.
- DoJ's consultative draft bill may be amended following conclusion of the engagement process in preparation for tabling a Bill before the end of 2020.

BACKGROUND:

- In 2007, following more than 25 years of global advocacy by First Nations and other Indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples (the Declaration) was adopted by the United Nations General Assembly (UNGA). Since then, the UNGA has reaffirmed the Declaration at least eleven times.
- Chiefs-in-Assembly ratified the Declaration by Resolution 37/2007; committed to its full implementation; welcomed the support of the Liberal Party of Canada, the New Democratic Party and the Bloc Québécois and demanded that the Government of Canada commit to implement the Declaration in full cooperation with Indigenous peoples.
- In 2015, the Truth and Reconciliation Commission of Canada (TRC), issued its final report and called on federal, provincial and municipal governments to adopt and implement the Declaration. By Resolution, Chiefs-in-Assembly supported the full implementation of all the TRC Calls to Action.
- In 2017, Chiefs-in-Assembly passed Resolution 97-2017 calling on all federal parliamentarians to support Bill C-262 (United Nations Declaration on the Rights of Indigenous Peoples Act). This Bill was sponsored by then NDP MP, Romeo Saganash.

- In its final report, the National Inquiry into Missing and Murdered Indigenous Women and Girls called for the full implementation of the Declaration and passage of legislation like Bill C-262.
- In 2018, Bill C-262 was passed by the House of Commons. However, it failed to pass in the Senate of Canada. This was due to a Conservative filibuster preventing it from moving to third reading and passage.
- Following this, Chiefs-in-Assembly passed Resolution 86/2019 (Federal Legislation to create a Framework for Implementation of the United Nations Declaration on the Rights of Indigenous Peoples). This resolution calls for: 1) a collaborative process to introduce legislation to implement the Declaration as government legislation by the end of 2020; 2) ensuring such legislation fully respects the Declaration; and 3) establishes the content of Bill C-262 as the floor rather than the ceiling.
- In 2019, First Nations in B.C. and the Government of British Columbia worked together to see Bill 41, Declaration on the Rights of Indigenous Peoples Act passed unanimously.
- In both the 2019, and the 2020, Speech from the Throne, the Liberal government committed to introduce federal legislation by the end of 2020. It has also publicly committed on several occasions to ensuring that a government bill will be at least as strong as Bill C-262 (Bill C-262 must be “the floor” of any government bill).
- AFN Executive Committee Motion 2019-12 called for the creation of a Legal Team to engage with the DoJ on the federal UN Declaration Legislation initiative. The AFN Legal Team has engaged with DoJ lawyers under Non-Disclosure Agreements and Confidentiality Undertakings.
- As National Chief, I have advocated for introduction of a Bill at least as strong as former Private Member’s Bill C-262 and the passage of such a Bill to Royal Assent as quickly as possible.

CURRENT STATUS:

- Towards, implementing Resolution 86-2019, I have secured the support of the federal Liberal Party, the NDP, the Bloc Quebecois and the Green Party for the objective stated in AFN Resolution 86-2019 – a government bill that is at least as strong as Bill C-262 and tabled before the end of 2020.
- In late September 2020, the DoJ launched an engagement process primarily focused on Indigenous peoples. The focus of engagement with First Nations has been on a federal consultative draft (Attachments 1-English and 2-French) reflecting the content of former private member’s Bill C-262. There are a few technical amendments. DoJ has confirmed that the purpose of the federal engagement with First Nations is to consider enhancements to strengthen the content which follows closely that of Bill C-262.
- DoJ has engaged with provinces/territories and held roundtables with some industry stakeholders, to raise awareness and education on the Declaration and its implementation.
- On November 12, 2020, the federal government held a federal-provincial-territorial ministerial level meeting with national and First Nations leadership as an opportunity to share perspectives on this initiative. This meeting allowed a frank exchange of views but did not involve any negotiations.

- The AFN regularly requests that the DoJ proactively provide information on their engagement process. There have been some challenges in receiving information in a timely manner. Information on engagements held to date are attached in Attachment 3.
- The AFN has been involved in the engagement process as a national organization. AFN lawyers have engaged with DoJ and CIRNA officials to ensure they understand technical aspects of the Declaration and its current legal effect; and to suggest options for enhancing the consultative draft. The AFN has told the federal government to keep its focus on engagement with First Nations in accordance with the Declaration, rather than provinces, territories or industry. The federal government has indicated that the purpose of its engagement is to enhance or strengthen the consultative draft through input from Indigenous peoples.
- Additional background about this initiative is available on the AFN Website at <https://www.afn.ca/policy-sectors/implementing-the-united-nations-declaration-on-the-rights-of-indigenous-peoples/>

NEXT STEPS:

- In response to First Nations advocacy, the federal government has repeatedly affirmed a commitment to table a government bill by the end of 2020, that is at least as strong as former Bill C-262.
- DoJ's consultative draft may change following conclusion of the engagement process in preparation for tabling a Bill before the end of 2020.
- Once a Bill is tabled, the AFN will analyze its content measured against Chiefs-in-Assembly Resolutions and will share updates with First Nations.
- Once in Parliament, it would be referred to a Parliamentary Committee for study.
- There would be several challenges ahead:
 - The Official Opposition (the Conservative Party of Canada) is likely not to be supportive of the legislation, as it has been the only federal party opposed. The Conservatives again may resort to filibuster techniques as they did with Bill C-262
 - The federal Parliamentary process is still hampered somewhat by COVID-19 restrictions and therefore, is slower
 - Some Provinces will likely continue to try to influence the federal government to weaken the language of a Bill
 - Time - the ever-shortening Parliamentary window to get a Bill tabled, then passed by the House of Commons and the Senate before June 2021 (if the minority Liberal government survives that long).

ATTACHMENTS:

- 1) Federal Consultative Draft-English
- 2) Federal Consultative Draft-French
- 3) UN Declaration Regional Engagement Meetings To-Date
- 4) National Chief Statement at Ad Hoc Table of FPTI Leaders on the UN Declaration on the Rights of Indigenous Peoples
- 5) DoJ Final Engagement Deck-English
- 6) DoJ Final Engagement Deck-French