



Discussion Guide

Assembly of First Nations National Forum on C-15: An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples

The National Forum on Bill C-15 is an opportunity for First Nations leadership to gain information about C-15, discuss and exchange views about C-15.

This document has been prepared to support and inform the discussion. In addition, the AFN has produced a several information documents that can be found on the AFN website.
www.afn.ca/bill-c-15/

The UN Declaration on the Rights of Indigenous Peoples

In solidarity with Indigenous peoples from around the world, First Nations leadership fought for decades to see the United Nations adopt the *UN Declaration on the Rights of Indigenous Peoples in 2007 (UN Declaration)*.

One of the critical elements in the *Declaration* is the affirmation of Indigenous peoples' inherent rights, including the right to self-determination. The *Declaration* is clear that Indigenous peoples have the right to make decisions, set their own priorities and enjoy protection for both the individual and collective rights of Indigenous persons and peoples. These fundamental rights include the affirmation of Indigenous governments authorized by Indigenous peoples, and governing according to the laws, customs and traditions, rather than imposed colonial systems such as the Indian Act.

The *UN Declaration* is a powerful tool to further affirm and protect the individual and collective rights of First Nations peoples at the domestic level of Canadian law. The *Declaration* sets out minimum standards for ensuring "the survival, dignity and well-being of the Indigenous peoples of the world" (Article 43).

Article 45 says that nothing in the *UN Declaration* can be interpreted as diminishing or taking away from the rights of Indigenous peoples such as rights protected by Treaty.

In several articles, the *Declaration* states that Indigenous peoples' own laws, traditions and representative institutions must be respected (see Articles 19, 27, and 40).

The *UN Declaration* is the first international human rights declaration created with Indigenous peoples, who played a key role in deciding the content in discussions at the United Nations. First Nations leaders were part of that process.



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History of First Nations Efforts to Achieve Federal Implementation Legislation

Since 2007, First Nations have tried several times to achieve passage of a federal bill to further Canada's commitment to implement the *UN Declaration*.

Romeo Saganash is a Cree lawyer who was very involved with the development of the *UN Declaration*. When he was a Member of Parliament, Mr. Saganash proposed a private Member's bill – Bill C-262 – that would have required the federal government to work with First Nations to implement the *UN Declaration*. By Resolution of Chiefs-in-Assembly, the AFN supported Bill C-262. There was widespread support among First Nations for Bill C-262 and by allies. C-262 was passed by the House of Commons in 2018. Unfortunately, stalling tactics meant that a final vote was never held in the Senate.

Following this, AFN Chiefs-in-Assembly passed a resolution calling for a government bill to be developed through a cooperative process, modelled on Bill C-262, and tabled in Parliament before the end of 2020. AFN resolution 86-2019 also states that any new implementation bill must fully respect the intention of the *UN Declaration* and be at least as strong as Bill C-262.

Federal Bill C-15

In December 2020, the Government of Canada tabled Bill C-15, a proposed federal law to advance implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.

C-15 is consistent with the *UN Declaration* and is a government Bill rather than a private members' or opposition bill as was Bill C-262. This has strengthened the wording and focus in the Bill and the comparison to date by leading legal experts indicates that the Bill C-15 does meet the requirement of Bill C-262 being the "floor" for any Government legislation.

What would Bill C-15 do?

- Condemn and reject all racist and colonial legal theories or assumptions. This includes the Doctrine of Discovery and *Terra Nullius*. Such doctrines still shape policies such as federal "comprehensive claims" and "self-government" policies and are not consistent with international law.
- Require the federal government to work cooperatively with Indigenous peoples to develop an Action Plan, with priorities and timetables, for implementation of the *UN Declaration*.
- Require Canada align the laws, policies and practices of Canada with the standards expressed in the *Declaration*.
- Require regular public reporting on progress and reporting and consideration by the Parliament of Canada.



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Additional Highlights of C-15

Bill C-15 would not limit the rights set out in the *Declaration*.

Bill C-15 includes a “non-derogation clause.” Non-derogation clauses are intended to make clear that a law does not diminish or take away any Treaty rights or inherent rights and title that are protected under the Constitution. The non-derogation clause in Bill C-15 uses wording found in other recent federal laws such as the *Indigenous languages Act*. This non-derogation clause says that implementation of the *Declaration* cannot be used to try to limit or take away First Nations’ rights.

The AFN has received expert legal advice that C-15 would not limit implementation of the *Declaration* to rights already recognized in the Constitution. This would be inconsistent with the *Declaration* and international human rights law.

Bill C-15 has several elements that are stronger than Bill C-262:

- Bill C-15 provides greater detail on the process of creating an action plan.
- Bill C-15 has new language on accountability, stating that an action plan must include “measures related to monitoring, oversight, recourse or remedy.”
- Bill C-15 takes a “distinctions-based” approach to the recognition of Indigenous rights, respecting that the rights, laws, practices, customs and traditions of First Nations, including territories, are distinct from that of the Metis or Inuit.
- Bill C-15 requires that the action plan be developed in collaboration and cooperation with Indigenous peoples.
- Bill C-15 requires that Canada’s Action plan include measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination “including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons”.
- Bill C-15 acknowledges a linkage between implementation of the *UN Declaration* and the promotion of environmental sustainability and addressing climate change.
- Bill C-15 provides for the designation of a minister to ensure that the Government of Canada takes a whole of government approach to implementation, action planning, and accountability for achieving the ends of the Declaration.



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C-15 and First Nations Rights Under International Law

The *UN Declaration* is part of international law. Bill C-15 won't change that. Expert legal advice to the Assembly of First Nations has concluded that Bill C-15 does not in any way undermine the *UN Declaration* or the rights of First Nations under international law.

Next Steps

Before Bill C-15 becomes law, it must be debated and voted on – in both the House of Commons and the Senate. This process will include hearings organized by House of Commons and Senate committees where changes to the bill can be proposed. First Nations may wish to put forward provisions to strengthen Bill C-15. After committee study, the Bill would be voted on.

Bill C-15 is in the Parliamentary Process and as such is open to opportunities for debate and improvement.