



Assembly of First Nations National Leadership Forum on Bill C-15

February 10-11, 2021

Summary Report

Executive Summary

Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* is proposed federal legislation that commits the Government of Canada to take action to advance the implementation of the UN Declaration on the Rights of Indigenous Peoples (UN Declaration), in consultation and cooperation with Indigenous peoples. This proposed law would require Canada to take all measures necessary to ensure that the laws of Canada are consistent with UN Declaration, and to prepare and implement an action plan with Indigenous peoples. The action plan must include measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination against Indigenous peoples.

[Assembly of First Nations \(AFN\) Resolution 86-2019](#) calls for a federal government bill that is as strong or stronger than the former Private Member's Bill C-262, which was sponsored by former Member of Parliament Romeo Saganash. Bill C-15 was tabled for first reading in the House of Commons on December 3, 2020 following a short engagement period on a "consultative draft". During the December 2020 AFN Annual General Assembly Chiefs expressed a desire for further dialogue. Accordingly, the AFN held a National Leadership Forum on Bill C-15 February 10-11, 2021. During the National Forum on Bill C-15, a perspectives and analysis were shared on various issues, including: the engagement process, the substance of the Bill, and implementation matters.

Participants generally expressed support for the Bill's affirmation of the inherent right to self-determination and the Bill's repudiation of all doctrines of superiority based on culture, race, or other identifiers, in particular the doctrines of discovery and terra nullius. Overall, participants expressed a need to strengthen Bill C-15 as it was then drafted. Proposed improvements included inserting an explicit reference to systemic racism, shortening the timelines associated with the Bill's implementation and creation of an Action Plan, and establishing an independent oversight mechanism. Some participants were opposed to the Bill. Several participants expressed concern that there has been insufficient consultation and engagement with First Nations prior to the Bill being tabled. Some were concerned that implementation of the Bill could be impeded by provincial opposition, opposition in the Senate, or a lack of political will. Several participants expressed concern that Bill C-15 could subordinate international legal principles to the domestic framework established in section 35 jurisprudence. In response, legal experts indicated that rather than subordinate the international rights of First Nations to domestic law, the Bill would require governments and courts to understand and review Canadian law, and



ensure it aligns with the rights and the minimum standards expressed in the UN Declaration. Some observed that Bill C-15 represents an opportunity to develop consent-based approaches that ensure respect and implementation of First Nations human rights, including the right to free, prior and informed consent (FPIC). Participants identified possible next steps for the dialogue related to Bill C-15 and the implementation of the UN Declaration.

Background

First Nations leadership and First Nations legal experts were deeply involved in the development of the UN Declaration. Following adoption of the UN Declaration by the UN General Assembly, AFN Chiefs-in-Assembly passed [Resolution 37-2007](#) to “demand that the Government of Canada commit to implement the UN Declaration , in full cooperation with the Indigenous Peoples in Canada.” Almost every Resolution of the AFN since 2011 (constituting over a thousand consensus resolutions by the Chiefs-in-Assembly on a myriad of issues) explicitly references and affirms the UN Declaration.

In 2016, Member of Parliament Romeo Saganash introduced Bill C-262 in the House of Commons. This private member’s bill set out a legislative commitment to implement the UN Declaration in Canada through a collaborative process, including measures to bring the laws of Canada into harmony with the requirements set out in the UN Declaration and the development of a national implementation plan. AFN Chiefs-in-Assembly have passed subsequent resolutions that call for the implementation of the UN Declaration. For instance, AFN [Resolution 97/2017](#) calls on all federal parliamentarians “to support Bill C-262 which represents a principled human rights legislative framework to advance reconciliation.” Although Bill C-262 was passed by the House of Commons, it was blocked in the Senate by filibuster techniques employed by a minority of Senators and died on the Order Paper. In response to this, Chiefs-in-Assembly passed Resolution 86-2019 which called for the immediate tabling of a government bill based on the former Bill C-262 and to be at least as strong as C-262. (Like all AFN Resolutions, [Resolution 86-2019](#) continues to provide a mandate until fulfilled or overridden by a subsequent inconsistent resolution.)

Following Resolution 86-2019, the Trudeau government committed the federal government through the [2020 Speech from the Throne](#) to introduce legislation that would work towards implementing the UN Declaration before the end of 2020.

¹ Assembly of First Nations, Resolution no. 37/2007, “Support and endorsement of the United Nations Declaration on the Rights of Indigenous Peoples” (2007), available online at <https://www.afn.ca/wp-content/uploads/2020/10/2007-AFN-37-Support-Endorsement-of-the-United-Nations-Declaration-on-the-Rights-of-Indigenous-Peoples.pdf>

² Assembly of First Nations, Resolution no. 97/2017, “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” (2017), available online at <https://www.afn.ca/wp-content/uploads/2020/11/Support-for-Bill-C-262.pdf>



Bill C-15, *United Nations Declaration on the Rights of Indigenous Peoples Act* was tabled for first reading in the House of Commons on December 3, 2020 following a short engagement period on a “consultative draft”.³ This Bill would require Canada to take all measures necessary to ensure that the laws of Canada are consistent with the UN Declaration, and must prepare and implement, with Indigenous peoples, an action plan including measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination against Indigenous peoples.

Bill C-15 is widely acknowledged to be stronger in several aspects than Bill C-262. In his introductory remarks to the meeting, National Chief Perry Bellegarde noted that there would be an opportunity to propose amendments during the Parliamentary process. He also noted that if an election is called before the Bill is adopted into law, it will die on the Order Paper.

Bill C-15 is a government Bill and is therefore less susceptible to procedural delay tactics in Parliament. Bill C-15 affirms that the UN Declaration has application in Canadian law and sets out a commitment to take “effective measures...in consultation and cooperation with Indigenous peoples”⁴ to “achieve the objectives of the Declaration.”⁵ If Bill C-15 receives Royal Assent, Canada will be required to “take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.”⁶ The Minister designated by the Governor in Council will be required to “prepare and implement an action plan to achieve the objectives of the Declaration.”⁷

Bill C-15 requires that the action plan be prepared within a set period of time and be tabled in Parliament and be made public. Finally, Bill C-15 requires an annual report to be tabled in Parliament to describe the measures taken to ensure the consistency of Canadian laws with the UN Declaration and the implementation of the action plan.⁸ (Further information materials about the content of Bill C-15 are available on the [AFN website](#).)

³ Since the AFN National Forum took place, study of the Bill by the House of Commons Standing Committee on Indigenous and Northern Affairs has been completed and Second reading by the House of Commons occurred on February 17th, 2021.

⁴ House of Commons of Canada, Bill C-15, “An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples” (2020) at preambular paragraph 13.

⁵ House of Commons of Canada, Bill C-15, “An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples” (2020) at s 5.

⁶ House of Commons of Canada, Bill C-15, “An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples” (2020) at s 5.

⁷ House of Commons of Canada, Bill C-15, “An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples” (2020) at ss 6(1).

⁸ House of Commons of Canada, Bill C-15, “An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples” (2020) at ss 7(1).



Support for Aspects of Bill C-15

Participants expressed support for:

- The Bill's affirmation of Indigenous peoples' inherent right to self-determination under international law and the affirmation that the UN Declaration already has legal effect
- The Bill's rejection of regressive and racist legal doctrines (and on this point, called for explicit references to the doctrines of discovery and terra nullius)
- The Bill as 'another tool' in the proverbial tool-box to advance rights implementation by First Nations.

Others noted that the UN Declaration is already helpful and is being used in court cases and in consent-based negotiations.

Potential Areas of Improvement

Discussion during the National Forum identified several aspects of Bill C-15 that could be improved or strengthened:

- Add an explicit denunciation of the doctrines of discovery and terra nullius in the preamble and operative parts of the Bill (for example, denunciation of doctrines of superiority is mentioned)
- Strengthen the references to "combating and eliminating all forms of violence discrimination" in the preamble and section 2(a)(i) by adding an explicit reference to systemic racism
- Reduce the deadline for the preparation of a national action plan from three years to two years
- Strengthen the non-derogation clause
- Provide interim assessments of the Bill's implementation
- Consider establishment of an independent body to oversee implementation.



Concerns

Participants identified several concerns that fall into three categories:

1. Concerns related to the Government of Canada's engagement process,
2. Concerns related to substantive provisions of Bill C-15, and
3. Concerns related to implementation.

Several participants expressed concern that there has been insufficient consultation and engagement with First Nations prior to the tabling of the Bill in the House of Commons. Ontario First Nations in particular expressed concern that the engagement between Canada and First Nations were inadequate, along with others. There were expressions of concern about insufficient funding for First Nations to participate in consultation and engagement and to secure proper legal advice to make decisions on whether to accept or reject Bill C-15. Several participants noted that the COVID-19 pandemic has made consultation and engagement more difficult than normal. Some participants were concerned that obstacles to the implementation of Bill C-15 could also delay the process of implementing the UN Declaration in Canada. Some participants noted that provincial opposition could significantly delay the implementation of Bill C-15. One position taken by a participant was that the political will to implement UN Declaration exists, but opposition from within government bureaucracy can impede progress in the current government.

Several participants argued that Bill C-15 is too weak or that its effectiveness may be jeopardized or subsumed by Canada's section 35 rights framework. (In his remarks, Minister Lametti stated that it is not the intention of the Bill to re-interpret the rights in the UN Declaration but rather to affirm that nothing in the Bill can abrogate or derogate (take away from) the rights of First Nations affirmed in the Constitution of Canada). One participant said that Bill C-15 is too weak because it does not contain any remedies for Indigenous peoples when our rights are violated; and does not provide recourse if Canada fails to implement UN Declaration.

Other participants suggested that section 35 case law is inconsistent with international human rights standards; and that Canadian courts have interpreted section 35 in a discriminatory manner (for example, Supreme Court of Canada decisions such as [Van der Peet](#) and [Sparrow](#) that allow for infringement of Aboriginal rights where "justifiable"). Section 35 case law contains certain legal assumptions about Crown sovereignty over First Nations lands and some participants expressed concern that this could jeopardize the proper implementation of the UN Declaration. Some felt that Bill C-15 would help to reform case law on s. 35.



Next Steps

Participants made suggestions for possible next steps:

- Continued engagement and consultation with First Nations
- Dialogue on issues relating to “free, prior and informed consent”
- Rejecting any perception or position that Canada has veto powers over First Nations
- Moving on the important work of identifying, and then reforming or overhauling, laws and regulations to ensure alignment with the UN Declaration’s minimum human rights standards
- Ensuring First Nations have resources immediately to tackle the complex and arduous task of legislative and regulatory reform and overhaul; as well as to support First Nations advocacy on matters relating to Declaration implementation
- First Nations taking steps towards greater self-determination without waiting for Canada to implement UN Declaration and pushing to implement our own inherent rights outside of the Canadian legal system.
- Developing a backup plan in the event Bill C-15 is blocked in the Senate.

Finally, there was a suggestion that another forum should be held to enable more dialogue on Bill C-15, the UN Declaration and international law and specific concepts such as free, prior and informed consent.

Conclusion

There was some diversity of views regarding the implications of Bill C-15 for First Nations. Some participants viewed C-15 as a strong opportunity that builds upon decades of sustained First Nations international advocacy while others oppose the legislation.

The AFN National Leadership Forum on Bill C-15 provided First Nations with an opportunity to have a wide-ranging dialogue on Bill C-15. There was broad agreement that C-15 should be strengthened as well as some opposition to the Bill. There were many concerns about the engagement process, and consensus that First Nations must be fully involved as equal partners in the implementation of the UN Declaration.

Additional information on the progress of Bill C-15 since the National Forum was held can be found on the [AFN website](#).