



Preliminary Comments from the Métis Nation – Saskatchewan Legislative Proposal Regarding the United Nations Declaration on the Rights of Indigenous Peoples

In this document, the Métis Nation – Saskatchewan (“**MN-S**”) provides its comments on the Government of Canada’s (“**Canada**”) Legislative Proposal Regarding the United Nations Declaration on the Rights of Indigenous Peoples (the “**Draft Legislation**”). These comments are provided with the following caveats:

1. Due to Canada’s condensed timeline, MN-S was unable to complete its internal consultation process with our Citizens on the Draft Legislation. Accordingly, these comments are preliminary and have not yet been reviewed by MN-S’s elected officials (the Provincial Métis Council (the “**PMC**”) and the Métis Nation Legislative Assembly (the “**MNLA**”)) or by MN-S’s Citizens.
2. MN-S intends to continue its internal consultation process with our Citizens on the Draft Legislation after submitting the initial comments contained herein. Once our internal consultation process is complete, MN-S intends to submit further comments to Canada from the PMC, the MNLA, and its Citizens.
3. MN-S intends to engage in the parliamentary process associated with the Draft Legislation to ensure that a fulsome and robust view of MN-S’s opinions on the Draft Legislation is provided to Canada and its federally elected officials.

These comments are provided to Canada without prejudice on a privileged and confidential basis.

A. Overview

Canada has committed to introducing legislation to provide a framework for implementing the *United Nations Declaration on the Rights of Indigenous Peoples* (“**UNDRIP**”). Canada has further committed to developing this legislation in collaboration and cooperation with Indigenous peoples.

Consultations with MN-S took place over a six-week period and consisted of three meetings held in conjunction with the Métis Nation of Alberta (“**MNA**”) and the Métis Nation of Ontario (“**MNO**”). Given the fundamental importance of the full implementation of UNDRIP to the survival and wellbeing of the Indigenous peoples of Canada, including the Métis Nation within Saskatchewan, MN-S regrets that more time and resources were not available to ensure the meaningful consideration of, and consultation with, Métis citizens regarding the Draft Legislation.

As noted above, MN-S will engage with its Citizens on the Draft Legislation through its internal consultation process and will provide the results of our process to Canada once it is complete. To that end, MN-S expects Canada will continue to consult and cooperate with MN-S throughout the



legislative process. Anything less would be contrary to the principles, rights, and obligations that UNDRIP enshrines.

MN-S's submissions consist of two parts: an overview of MN-S's concerns and suggestions with regards to the Draft Legislation and a blackline of MN-S's suggested amendments to the Draft Legislation. MN-S notes that our proposed amendments closely align with those of MNA and MNO

Overview of MN-S's Position on the Draft Legislation

If the Draft Legislation is to be meaningful in law, it must make clear UNDRIP's role in Canadian law and outline a robust process for the national action plan, annual reporting and monitoring of the national action plan, and ongoing consultation with Section 35, *Constitution Act, 1982* rights-holders ("**Rights-Holders**").

The above can be achieved by:

1. Clarifying the function of UNDRIP in Canadian law;
2. Providing clarity on the mechanics of the national action plan and the commitment to consult with Rights-Holders; and
3. Appointing a third-party with oversight authority to monitor and report on the progress made on the national action plan.

B. General Comments

MN-S is supportive of UNDRIP and its full implementation into Canadian law, which MN-S considers a significant milestone in our shared history. However, MN-S has concerns with both Canada's consultation process in developing the Draft Legislation and the form and content of the current Draft Legislation. Canada must recognize MN-S's legitimate need to engage our Citizens. The development and implementation process cannot bypass those who will be directly affected by the Draft Legislation.

MN-S has conducted its review of the Draft Legislation through the lens of our traditions, knowledge, and teachings. All aspects of our participation in this process respect our people's culture, laws, practices and traditions, and spiritual practices. We hold Canada to these same standards of respect, transparency, and good relations, as one nation respecting the laws and practices of another nation.

We also emphasize that respect for Indigenous processes and legal structures is an express requirement throughout UNDRIP, particularly at Articles 3, 4, 18, 19, and 20. Our government and other Indigenous governments need to fully consider the interests and needs of Rights-Holders.



It is imperative for Canada to respect MN-S's right to consider the Draft Legislation according to Métis laws, traditions, and our Constitution.

C. Necessary Amendments to the Draft Legislation

If the Draft Legislation is to be meaningful in law, it must make clear UNDRIP's role in Canadian law and outline a robust process for the national action plan, annual reporting and monitoring of the national action plan and ongoing consultation with Rights-Holders. MN-S's suggested amendments to the Draft Legislation achieve both goals. The commentary below highlights the importance of the recommended amendments and provides clarity as to why they are vital moving forward with implementing UNDRIP into Canadian Law.

1. Preamble

The Preamble of the current Draft Legislation must recognize the importance and the necessity of a Nation-to-Nation and government-to-government relationship between Canada and Indigenous governments, including MN-S. As set out in UNDRIP, Indigenous peoples' right to self-determination and right to engage through their own representative institutions is of utmost importance. The Preamble must be amended accordingly to recognize the democratically-elected Métis Nation governments as distinct Indigenous people of Canada.

The Preamble must also recognize that the negative impacts of colonialism continue to affect Indigenous communities in the present day. Currently, the Preamble merely states that "Indigenous peoples have suffered historic injustices as a result of, among other things, their colonization and dispossession from their lands, territories and resources." The injustices sustained by our people are not just historic. The Preamble must recognize and accept that Indigenous peoples continue to face those injustices today – particularly Indigenous women.

To that end, MN-S strongly recommends that the Preamble and national action plan specifically recognize Indigenous women's central roles within their communities. Indigenous women, including Métis women, are knowledge holders with specific knowledge about nationhood and Métis laws. As such, the Draft Legislation must ensure that Métis women are engaged with directly, and benefit equally from, the implementation of UNDRIP into Canadian law.

The Preamble must also commit to a distinctions-based process with a recognition that the Indigenous peoples of Canada are not a single nation. UNDRIP calls for this identification and recognition and so too should the Draft Legislation. Indigenous governments cannot be dealt with through a "one-size fits all" approach. Only a Nation-to-Nation approach will satisfy the express language of UNDRIP.



2. UNDRIP in Canadian Law

Section 3 of the current Draft Legislation states that UNDRIP is “affirmed as a universal international human rights instrument with application in Canadian law.” This language is vague and does not specify *when* or *how* UNDRIP has application in Canadian law.

Section 3 should clearly affirm that UNDRIP applies on all matters involving Indigenous peoples, their interests and their rights. The current language limits UNDRIP to a human rights instrument. This is problematic as it suggests that UNDRIP would only be applied in a human rights context and is not clear if UNDRIP would be available to inform the interpretation of constitutional rights and obligations in relation to Indigenous peoples. Section 3 should not adopt any language that unduly confines the application of UNDRIP in Canadian law.

UNDRIP expressly calls in Article 13 for the inclusion and recognition of Indigenous laws and traditions, including the oral tradition. Accordingly, MN-S proposes language that captures the understanding that UNDRIP should be used, along with Indigenous perspectives, laws, and traditional knowledge, to interpret and understand Section 35, *Constitution Act, 1982* and the Indigenous rights framework flowing therefrom.

As a “purpose” section to the Draft Legislation, it is critical that the Draft Legislation clearly states that it is binding on Her Majesty in Right of Canada and the provinces/territories. This will ensure that there is no question as to the nature of the Draft Legislation. In addition, Section 3 must also reiterate the diversity of the Indigenous peoples of Canada and commit to a distinctions-based approach and the involvement of Métis women through all aspects of implementing UNDRIP into Canadian law.

3. Consultation and Cooperation with the Indigenous Peoples of Canada

Sections 4 and 5 of the current Draft Legislation provide that Canada must implement UNDRIP into Canadian law “in consultation and cooperation with the Indigenous peoples of Canada.” This language does not identify how Canada plans to consult and cooperate with MN-S, or the Indigenous peoples of Canada more generally.

MN-S’s concern with the lack of clarity and guidance is reasonable given the condensed and rushed consultation timeline Canada is taking with regards to the Draft Legislation. UNDRIP itself mandates that such processes consider Indigenous decision-making processes and institutions (see UNDRIP, art 18).

Sections 4 and 5 should obligate Canada to ensure that Rights-Holders have adequate time and resources to meaningfully engage in any consultation and collaboration processes. To accomplish this, there must be a clear plan and framework. We suggest guiding principles from UNDRIP Article 8 be incorporated into the national action plan:



Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them

4. National Action Plan

Section 5 of the current Draft Legislation states that Canada will “develop and implement a national action plan to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.” However, the Draft Legislation does not detail what Canada will do to implement UNDRIP and achieve this objective. The lack of detail regarding the national action plan does not inspire confidence that the national action plan will be substantively robust and genuinely reflect Indigenous peoples needs, concerns, and ambitions. The national action plan should contain procedural mechanisms to ensure that it is implemented by Canada in a manner that is diligent, accountable, and transparent.

Canada could significantly improve the consultation draft by providing further detail regarding the process by which the national action plan will be developed, its purpose, as well as its eventual content. These details should be consistent with UNDRIP, which states that “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” (UNDRIP, art 18).

In addition, the national action plan must include a comprehensive plan to review all Canadian laws through a distinctions and gender-based analysis to ensure that Indigenous women will benefit equitably from the implementation of UNDRIP into Canadian law.

As such, the national action plan should include clear measures for adequate, sustainable, and long-term funding for the implementation of UNDRIP, as well as for Indigenous people and Indigenous governing bodies to participate in the development of the plan and its implementation.



5. Annual Report to Parliament

Section 6 of the current Draft Legislation states that the Minister of Crown-Indigenous Relations must table an annual report to Parliament on the implementation of UNDRIP into Canadian law. This provision does not provide for any accountability measures and does not inspire confidence that an accurate and pertinent annual report will be tabled.

Section 6 needs to be amended such that an Indigenous Rights Officer, who serves as a Officer of Parliament, is granted the authority to oversee Canada's carrying out of Sections 4 and 5 and to hold Canada accountable to its commitment to implement UNDRIP into Canadian law. This Indigenous Rights Officer must be independent and must be solely responsible for preparing and tabling the annual report to ensure its accuracy and pertinence. Additionally, in preparing the annual report, this Indigenous Rights Officer must ensure Indigenous peoples are able to meaningfully engage in the national action plan to include Métis governments, Elders, Métis women and citizens.

To ensure sufficient time to properly appoint the Indigenous Rights Officer, Canada should be open to the possibility of delaying the coming into force of the provision establishing this role, as appropriate and as necessary.

D. Conclusion

MN-S's comments on the Draft Legislation are provided with the caveats noted in this document's introduction. On such matters as the current Draft Legislation, our laws and protocols require that we consult with Rights-Holders, the PMC and the MNLA. Our laws, processes and structures must stand on the same footing as Canada's laws and structures. Otherwise, the Draft Legislation will represent the type of unilateral exercise of governmental authority that UNDRIP prohibits.

MN-S remains available to discuss these submissions with Canada as a part of the consultation and cooperation process.