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The UN Declaration on the Rights of Indigenous Peoples

AN OVERVIEW

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Agenda

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2. Scope of UNDRIP
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INTO TO UNDRIP

Background on UNDRIP

- The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international, aspirational document designed to be a global benchmark for Indigenous rights.
- UNDRIP was adopted by the UN General Assembly in 2007. At the time, Canada voted against UNDRIP (along with Australia, New Zealand, and the USA).
- In 2010, Canada endorsed UNDRIP with caveats.
- In 2016, Canada announced its full support of UNDRIP





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SCOPE OF UNDRIP

Scope of UNDRIP

- UNDRIP enshrines the rights that constitute the minimum standards for the survival, dignity, and well-being of Indigenous peoples around the world.
- UNDRIP guarantees a broad scope of Indigenous rights, including:
 - Cultures and customs;
 - Economy;
 - Languages;
 - Education; and
 - Land.

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Right to Self-Determination & Self-Government

- UNDRIP recognizes Indigenous peoples' right to self-determination and self-government.
 - “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.” (UNDRIP, art. 3)
 - “Indigenous peoples, in exercising their **right to self-determination**, have the **right to autonomy or self-government** in matters relating to their international and local affairs, as well as ways and means for financing their autonomous functions.” (UNDRIP, art. 4)



Principle of Free, Prior and Informed Consent

- UNDRIP provides for the principle of free, prior and informed consent (FPIC).
 - “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place **without the free, prior and informed consent** of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” (UNDRIP, art. 10)
 - “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.” (UNDRIP, art. 19)
 - “States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples **without their free, prior and informed consent.**” (UNDRIP, art. 29)
 - “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions **in order to obtain their free and informed consent prior to** the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” (UNDRIP, art. 32(2))





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EFFORTS TO IMPLEMENT UNDRIP IN CANADA

Bill C-262

- In 2016, MP Romeo Saganash introduced 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*.
- Bill C-262 required the Government of Canada to take “all measures necessary” to align all Canadian laws with UNDRIP.
- Bill C-262 passed the House of Commons but died in the Senate.



Bill 41, *Declaration on the Rights of Indigenous Peoples Act*

- On February 12, 2019, the Government of British Columbia (BC) announced its commitment to introduce legislation to implement UNDRIP.
 - “BC will be the first province in Canada to introduce legislation to implement [UNDRIP], legislation co-developed with the First Nations Leadership Council and other Indigenous organizations.” (BC Throne Speech – 2/12/2019)
- On October 24, BC introduced Bill 41, *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), in the BC Legislature.
- On November 26, 2019, the BC Legislature passed DRIPA unanimously, making BC the first Canadian jurisdiction to enact legislation implementing UNDRIP.



Bill 41, *Declaration on the Rights of Indigenous Peoples Act*

- DRIPA requires BC to ensure that all its provincial laws are “consistent with” UNDRIP, through consultation and cooperation with the Indigenous peoples in the province.
- “For the purposes of implementing this Act, the government **must consider the diversity of the Indigenous peoples in British Columbia**, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in Canada.” (DRIPA, s 1(2))
- “In consultation and cooperation with the Indigenous peoples in British Columbia, the government **must take all measures necessary** to ensure the laws of British Columbia are consistent with [UNDRIP].” (DRIPA, s 3)





PROPOSED FEDERAL LEGISLATION

Proposed Federal Legislation

- On September 23, 2020, Canada announced its commitment to introduce federal legislation to implement UNDRIP before the end of 2020.
 - “The Government will move forward to introduce legislation to implement the United Nations Declaration on the Rights of Indigenous peoples before the end of this year.” (Throne Speech, 2020)
- Canada committed to co-developing this proposed federal legislation Indigenous peoples in Canada.
 - “We will move forward with introducing co-developed legislation to implement [UNDRIP] as government legislation by the end of 2020. In this work, we will ensure that this legislation fully respects the intent of [UNDRIP], and establishes Bill C-262 as the floor, rather than the ceiling, when it comes to drafting this new legislation.” (Liberal Party’s Platform Commitments)



Proposed Federal Legislation

- Canada has presented a draft of its proposed federal legislation. It includes the following main sections:
- **United Nations Declaration on the Rights of Indigenous Peoples**
 - (3) The United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007, and that is set out in the schedule, is hereby affirmed as a universal international human rights instrument with application in Canadian law.
- **Consistency**
 - (4) The Government of Canada, in consultation and cooperation with the Indigenous peoples of Canada, must take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples.
- **National action plan**
 - (5) The Government of Canada must, in consultation and cooperation with the Indigenous peoples of Canada, develop and implement a national action plan to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.
- **Annual report to Parliament**
 - (6) During the 20-year period that begins on the day on which this Act comes into force, the Minister of Crown-Indigenous Relations must cause to be tabled in each House of Parliament, within 60 days after the end of each fiscal year — or, if the House is not then sitting, on any of the first 15 days of the next sitting of the House — a report on the implementation of the measures referred to in section 4 and the plan referred to in section 5 for that fiscal year.





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