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**WRITTEN SUBMISSION  
OF THE FIRST NATION OF NA-CHO NYÄK DUN**

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**To:** Standing Committee on Indigenous and Northern Affairs

**From:** First Nation of Na-Cho Nyäk Dun

**Date:** April 8, 2021

**Re:** **Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples**

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## INTRODUCTION

The First Nation of Na-Cho Nyäk Dun (“FNNND”) is pleased to submit this written brief to the Standing Committee on Indigenous and Northern Affairs (the “Committee”) on Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* (“Bill C-15”). FNNND welcomes Bill C-15, which, once passed, will advance reconciliation with Indigenous peoples.

Bill C-15 affirms the application of the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) in Canada and provides a framework for its implementation domestically. Importantly, UNDRIP is grounded in self-determination and recognizes the inherent rights of Indigenous peoples, including to our lands and resources, as well as the observation and enforcement of our treaty rights. Bill C-15 represents an important step towards ensuring the fulsome application of UNDRIP’s obligations and commitments in the Canadian context.

FNNND is a self-governing First Nation with a Traditional Territory that covers a large swathe of both Yukon and the Northwest Territories. FNNND signed the *First Nation of Nacho Nyak Dun Final Agreement* (the “Final Agreement”) with Canada and the Government of Yukon in 1993. The Final Agreement is a modern treaty, constitutionally protected under section 35 of the *Constitution Act, 1982*.<sup>1</sup> FNNND is also in the process of negotiating a “transboundary” agreement with Canada and the Government of the Northwest Territories to recognize our rights in the portion of our Traditional Territory located in the Northwest Territories. This has enabled FNNND to appreciate that Bill C-15 and UNDRIP must be interpreted to affirm and uphold all rights FNNND enjoys as an Indigenous people—both the rights enshrined in our modern treaty and our inherent rights as an Indigenous nation.

FNNND would like to raise two key considerations for the Committee’s attention as it considers Bill C-15:

### I. BILL C-15 MUST APPLY TO LAWS ENACTED BY THE TERRITORIES

FNNND urges the Committee to amend Bill C-15 to ensure that it explicitly applies to laws passed by territorial governments. FNNND is deeply troubled that Bill C-15, as currently drafted, might exempt—or might be interpreted to exempt—the laws passed by territorial governments from its application, a situation that could be profoundly harmful to Indigenous peoples across the North.

As emanations of the federal Crown and creatures of federal statute exercising powers delegated to them by Parliament, the laws of the territories are “laws of Canada”<sup>2</sup> to which Bill C-15

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<sup>1</sup> *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103 at para 2.

<sup>2</sup> See: Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, 2nd Sess, 43rd Parl, 2020, s 5 [Bill C-15].

should and must apply. FNNND therefore urges the Committee to ensure that Bill C-15 is amended to make clear it applies to laws passed by territorial governments. Failing to ensure Bill C-15 applies to the laws passed by territorial governments creates an untenable, inequitable situation where territorial legislation would not need to be consistent with UNDRIP. This is inconsistent with Canada's commitments to reconciliation as well as its international obligations under UNDRIP.

In both Yukon and the Northwest Territories, Canada has—by federal statute—devolved jurisdiction over lands and resources to territorial legislatures. Regardless, Canada's obligations both as a treaty partner and as the delegating authority for territorial legislatures, require Canada to purposively uphold its treaty commitments and ensure the territories do the same. Canada must ensure that territorial governments exercise their devolved powers in a manner consistent with our inherent rights and with Canada's commitments under UNDRIP, as well as the Crown's nation-to-nation relationship with Indigenous governments. The honour of the Crown demands nothing less.

As currently drafted, the only section in Bill C-15 that speaks to its application to laws passed by the territories is a preambular provision, which provides that Bill C-15 would not preclude the provinces, territories and municipalities from enacting their own legislation to implement UNDRIP.<sup>3</sup> While FNNND certainly supports and encourages all orders of government in Canada undertaking to pass legislation in order to confirm the application of UNDRIP, it cannot be left open to a territorial government to decline to pass such legislation and thus create an "UNDRIP-free-zone."

## **II. BILL C-15 MUST RE-COMMIT THE CROWN TO IMPLEMENTING TREATY PROMISES**

FNNND calls on the Committee to amend Bill C-15 to emphasise the urgent need for the Crown's treaty obligations and promises to be fulsomely and purposively implemented. Although FNNND is pleased to see that the Preamble of Bill C-15 recognises the "urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties,"<sup>4</sup> Bill C-15 falls short of explicitly embracing the importance of implementing and upholding treaty commitments, as confirmed in Article 37 of UNDRIP.<sup>5</sup>

FNNND underwent a long and arduous negotiation process, starting in 1973 during the beginnings of the modern land claims movement, to conclude our constitutionally protected Final Agreement in 1993. Like all modern treaties, the objective of the Final Agreement is to

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<sup>3</sup> Bill C-15, *supra* note 1, Preamble.

<sup>4</sup> *Ibid.*

<sup>5</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Suppl no 49, UN Doc A/RES/61/295 (2 October 2007), Article 37.

advance reconciliation and “foster a positive long-term relationship” between Indigenous and non-Indigenous peoples.<sup>6</sup> We understood the treaty-making process to be the best way for our rights to be recognised and affirmed, and to establish a new relationship with the Crown, founded on respect, cooperation, and partnership.

Unfortunately, many of our treaty promises remain unfulfilled nearly thirty years after its signing. To address Canada’s history of broken promises and to meaningfully advance reconciliation, Bill C-15 must expressly re-commit the Crown to implementing its treaty obligations. It is critical that Bill C-15 spur the Crown into diligently and purposively enforcing and upholding its treaties with Indigenous nations like FNNND and implementing the promises and obligations therein.

## RECOMMENDATIONS

FNNND urges the Committee to ensure Bill C-15 is amended to address our concerns, as follows:

### **A. Bill C-15 must unequivocally apply to laws passed by the territories**

Bill C-15 should be amended to clarify that it applies to laws passed by the territories, unless and until the territories pass their own legislation to incorporate UNDRIP into territorial law.

### **B. Bill C-15 must re-commit the Crown to implementing treaty promises**

Bill C-15 should be amended to emphasize the importance of implementing treaty promises and commitments, and recognize that the Crown’s failure to do so undermines reconciliation. Bill C-15 should re-commit the Crown to diligently and purposively upholding all treaties with Indigenous Governments.

## CONCLUSION

FNNND supports Bill C-15 and the long-awaited implementation of UNDRIP in Canada. We have before us an invaluable opportunity to recognize Indigenous peoples’ inherent rights and honour Canada’s treaty promises and commitments. For too long, Indigenous peoples have had to pursue treaty implementation through litigation; UNDRIP and Bill C-15 offer a new, collaborative path forward. One based on partnership and cooperation rather than conflict and opposition, in keeping with the “full box” approach to affirmatively recognizing Indigenous rights. This is an opportunity to break with the long history of broken promises and broken treaties, and to recommit the Crown to true partnership with Indigenous nations.

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<sup>6</sup> *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 52, [2010] 3 SCR 103 at 10.

We therefore urge the Committee to consider our recommendations to amend Bill C-15 to ensure it applies to the territories and to re-commit the Crown to implementing its treaty promises and commitments.

FNNND thanks the Committee for its ongoing study of Bill C-15 and hopes that this written brief offers insight into Indigenous perspectives about the opportunities and shortcomings of Bill C-15. We look forward to continuing to participate in this process.