

**Submission to the Standing Committee on Indigenous and  
Northern Affairs Study on Bill C-15:  
*An Act Respecting the United Nations Declaration on the Rights of  
Indigenous Peoples***

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## Introduction

I want to open by acknowledging the lands of the Algonquin people where the hearing is being held and the lands of the Musqueam people where I have the privilege to work and live, and where I am sitting, joining you virtually this morning.

My name is Sheryl Lightfoot. I am Anishinaabe from the Lake Superior Band of Ojibwe. I am Canada Research Chair of Global Indigenous Rights and Politics at the University of British Columbia.

I had the honour to appear before this Committee three years ago, in April 2018, when Bill C-262 was being debated in Parliament. Along with many other First Nations scholars, advocates, and community members, I was deeply disappointed by the failure to pass C-262 into law. I am pleased to be here with you today in hopes that Parliament may soon correct this historic failure, and pass Bill C-15.

## Implementation Expectations of Human Rights Instruments

International human rights instruments, like the UN Declaration, are developed with the intention that that they will be implemented domestically, and in full.

In legal human rights scholarship, we often talk about “rights ritualism.”<sup>1</sup> In short, this means states saying one thing in international human rights processes and then doing something else at home.

In my academic work, as a political scientist, I have observed a pattern that I call “selective endorsement.”<sup>2</sup> This means that some states have attempted to water down the UN Declaration, accepting only some rights for implementation and then self-selecting out of other rights. It bears repeating that the UN Declaration is a holistic human rights document. It is not morally acceptable to pick and choose the human rights one will respect while others are left behind. We criticize and hold many other countries to account for this very pattern of behaviour.

I want to point out that rights ritualism and selective endorsement are not limited to any one government or any one political party. Governments of all political stripes have repeatedly broken their promises to Indigenous peoples. Treaties have been routinely violated. Supreme Court judgements are reinterpreted or sometimes, even ignored. All the while portraying Canada as a global model for democracy and

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<sup>1</sup> Charlesworth H and Larking E (2014) *Human Rights and the Universal Periodic Review: Rituals and Ritualism*. Cambridge, UK: Cambridge University Press.

<sup>2</sup> Lightfoot S (2012) Selective endorsement without intent to implement: Indigenous rights and the Anglosphere. *International Journal of Human Rights* 16(1): 100-122.

human rights. Of course, many wonder if Canada is really serious about reconciliation. I even hear some very frustrated Indigenous people say, “reconciliation is dead.”

So what do we do? Do we give up? Or do we find better tools?

### **Bill C-15 Builds Upon Bill C-262**

I am strongly in favour of the implementation model that Romeo Saganash created when he first brought Bill C-641 and then Bill C-262 before Parliament. This model, which is the foundation for Bill C-15, has a number of elements that I think are crucial.

C-15 requires collaboration with Indigenous peoples. It requires concrete action including legal reform and an action plan. And, it requires public reporting.

A large part of my scholarly work is about looking at the comparative experiences of Indigenous peoples around the world, and I feel that Bill C-15 is advancing the global conversation and setting a positive example for other states.

### **Comparison with Implementation Efforts Around the World**

A number of States have undertaken legal and policy measures to implement the Declaration. Committee members may have heard of the National Action Plan being developed in New Zealand, for example.<sup>3</sup> Several countries in Africa have also implemented national legislation and policies to operationalize their commitment.<sup>4</sup>

Constitutional reforms can also be an essential step and Latin America has been especially proactive in this regard.<sup>5</sup>

Various national courts—in Belize, Botswana, Canada, Chile, Colombia, Guatemala, Kenya, Mexico, the Russian Federation—have cited the Declaration in legal decisions.<sup>6</sup>

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<sup>3</sup> <https://www.tpk.govt.nz/en/a-matou-mohiotanga/cabinet-papers/develop-plan-on-nz-progress-un>

<sup>4</sup> Congo, Democratic Republic of the Congo, Kenya, Morocco, Namibia, Niger, and Chad.

<sup>5</sup> Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, and Nicaragua.

<sup>6</sup> United Nations (2019) *State of the World's Indigenous Peoples: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*.

National human rights institutions in countries such as Indonesia, Malaysia, Namibia, parts of the Russian Federation, and the United States, for example, use the Declaration as a framework for monitoring the implementation of Indigenous peoples' rights at the national level.<sup>7</sup>

The Declaration is also being implemented regionally. Examples here include the European Union and the Organization of American States, the African Commission and the African Court on Human and Peoples' Rights. The Inter-American Court of Human Rights has also drawn substantially from the Declaration.<sup>8</sup>

For more than a decade now, the Declaration has been used to set guidelines and standards on the international level. A number of organizations have developed policies and/or guidelines to align with the Declaration, for example, the UN Development Programme, World Bank, Inter-American and Asian Development Banks, and UNESCO.<sup>9</sup>

International treaty bodies are also increasingly utilizing the UN Declaration in their assessments of compliance, therefore making the UN Declaration on the Rights of Indigenous Peoples legally binding through these treaties.<sup>10</sup>

### **Strength of Bill C-15's Approach**

Quite simply, Bill C-15 represents the best approach to human rights implementation that I have seen, bringing these various elements together. Passing Bill C-15 into law will set a genuinely positive example for the rest of the world community. I know that other governments and Indigenous peoples in other regions of the world are watching this process very closely.

Last week, my colleague Joshua Nichols from the University of Alberta and I published an opinion piece about the unfinished business of reconciliation.<sup>11</sup> The Supreme Court has recognized reconciliation as a Constitutional imperative. As Josh and I wrote, the court meant something much more profound and challenging than simply trying to get along. Reconciliation is about putting inherent rights and title into

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<sup>7</sup> Ibid., 16.

<sup>8</sup> Ibid., 16-18.

<sup>9</sup> United Nations (2015) *System-Wide Action Plan on the Rights of Indigenous Peoples*.

<sup>10</sup> International Convention on the Elimination of All Forms of Racial Discrimination and Committee on the Elimination of Racial Discrimination (2017) Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada.

<sup>11</sup> Lightfoot S and Nichols J (2021) We Can't Keep Leaving Reconciliation to the Courts. *The Tyee*, 5 March 2021.

meaningful practice. As we said in the article, up to this point, governments in Canada have left this work almost exclusively in the hands of the courts – and this has been a profound mistake.

Yes, Canadian courts have elaborated many important standards and principles. But this has come at the cost of incredibly long, costly and adversarial trials. And the result has been piecemeal at best. Almost 40 years after Aboriginal and Treaty rights were entrenched in Section 35 of the Constitution, we do not have anything like a comprehensive, systematic or coherent body of law setting out the rights of Indigenous peoples or the responsibilities of governments and private actors.

If Canada is serious about reconciliation, we need a different approach. The Declaration is the right foundation. Bill C-15 provides a clear, sensible process to bring those commitments to life.

### References

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