


Submission

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*

8 April 2021

Endorsed by

Amnistie Internationale Canada, BC Assembly of First Nations, BC Treaty Commission, Canadian Friends Service Committee (Quakers), First Nations Summit, Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, KAIROS: Canadian Ecumenical Justice Initiatives, Métis Nation, Dr. Mariam Wallet Aboubakrine, Dr. Sheryl Lightfoot, Canada Research Chair of Global Indigenous Rights and Politics, UBC, Ellen Gabriel, Kanien'kehá:ka Activist



The Coalition for the Human Rights of Indigenous Peoples brings together Indigenous Nations, organizations, grassroots leaders and other experts, along with civil society organizations. The common purpose is to ensure that the human rights of Indigenous peoples, in particular, those affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples (Declaration)*, are recognized, respected and upheld.

Coalition members have long advocated for the adoption of a legislative framework to implement the *Declaration*. All parties in the Canadian Parliament have expressed their support for the principles and ideals of the *Declaration*. Such statements are not sufficient. Concrete implementation in law and policy is essential to meeting the fundamental purposes of the *Declaration*. A legislative framework is critical to ensuring that this work will be carried out, regardless of who forms the government of the day.

The *Declaration* states that its provisions constitute “the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” Nothing less than the fulfillment of these standards is acceptable. In Article 42, the *Declaration* sets out the expectation that “States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this *Declaration*.” Article 38 requires that “States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this *Declaration*.”

Our Coalition strongly supported Bill C-262 – Romeo Saganash’s private Member’s bill – and issued numerous statements, factsheets and commentary explaining why the approach to implementation set out in that Bill was pragmatic and necessary. When Bill C-15 was tabled, our Coalition released a public statement welcoming C-15, recognizing that C-15 strengthens the core elements of Bill C-262, as the Government had promised to do.

Implementation of the *Declaration* is long overdue. Canada’s 14-year-long failure to move ahead with implementation in a meaningful, concrete and coordinated way is not based on any problems with the *Declaration* itself, but rather is due to the unfortunate, long-standing politicization of the *Declaration*. This history of needless delays only underlines the need to enshrine Canada’s implementation commitments in legislation.

It is important to be clear about what Bill C-15 does and does not do. In our view, much of the questions about the Bill are based on fundamental misunderstandings and, in some instances, misrepresentation of the Bill’s content.

Bill C-15 puts in place essential elements of implementation

There are many important elements to Bill C-15. The preamble contains welcome language affirming the inherent right to self-determination, committing to respect and uphold Treaty rights, rejecting colonialism, and repudiating all racist doctrines. It is no exaggeration to say that Bill C-15 has some of the strongest anti-discrimination language of any legislation ever proposed to Parliament. The importance and timeliness of these elements of Bill C-15 cannot be overstated.


The focus of this submission is on provisions of Bill C-15 that build on the implementation model originally set out in Bill C-262. These elements are collaborative law reform, collaborative development of a National Action Plan, and public reporting and accountability.

Bill C-15 affirms in section 4(a) that the *Declaration* is “a universal international human rights instrument with application in Canadian law.” The Bill further states in section 5 that the Government of Canada “must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.”

These provisions do not overthrow existing laws or impose a new layer of legal complexity on top of domestic law. Rather, these provisions acknowledge the current reality that international human rights standards already have legal effect in Canada – which is why the *Declaration* is already being used by courts and tribunals to interpret and apply domestic law. These provisions require the Government of Canada to respond to this reality in a proactive and collaborative manner. Bill C-15 section 2, also provides explicit assurance that the process of law reform cannot “abrogate or derogate” from rights of Indigenous peoples, including Treaty rights, that are affirmed and protected by section 35 of the Canadian Constitution.

Second, Bill C-15 section 6(1) requires that a designated government Minister “must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the *Declaration*.” Bill C-15 further states in section 6(2) that such an action plan “must include measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons.”

Finally, Bill C-15 section 6(5) requires the designated Minister to table the Action Plan in the House of Commons and Senate and, in section 7(1) to make annual reports on progress made toward implementation of the *Declaration*. Bill C-15 also states in section 6(6) and 7(6) that these reports must be made public.



In our view, these essential elements of Bill C-15 – law reform, collaborative development of an action plan, and public evaluation and reporting – are not unexpected. These essential provisions come directly from Bill C-262. Bill C-262 was before Parliament for three years. It was debated in the House of Commons and the Senate and was studied by committees of both Houses. In 2019, Members of Parliament passed a unanimous resolution recognizing the importance of Bill C-262 and calling on Senators to bring the Bill to a final vote. There is no doubt that Bill C-262 would already be part of Canadian law except for the stalling tactics of a small minority of Senators who prevented the final vote.

Too much time has already been lost due to stalling and delays

The *Declaration* was developed through more than two decades of intensive deliberations. The *Declaration* was subject to longer and greater scrutiny than any other international human rights instrument, including the core conventions of the international human rights system.

Our Coalition first came together almost 20 years ago. Many of our members had been involved in the process long before that and some had been involved from the very beginning.

Throughout the development of the *Declaration*, and in the almost 14 years since the *Declaration* was adopted by the UN, we have seen Canada's position repeatedly swing between support and obstruction. These reversals have taken place when the governing party has changed and even within the same government.

Canadian officials were deeply involved in the negotiation of the *Declaration* and, in the final years of the process, played a critical role in finding common ground between Indigenous peoples and states. Despite this, Canada was one of only four states to vote against the *Declaration* at the UN General Assembly in 2007.

Louise Arbour, the former Supreme Court of Canada Justice who at the time of the adoption was serving as the UN High Commissioner for Human Rights, publicly expressed her "profound disappointment" in Canada's position. She called Canada's vote a "very surprising position for Canada to take after not only years (but) decades of progressive involvement on that issue.... I found it rather astonishing."ⁱ

We know from access to information requests that legal and policy reviews of the *Declaration* had been carried out by numerous federal departments prior to the final vote. These reviews had concluded that there was no reason for Canada to oppose its adoption.ⁱⁱ

Three years after this vote, the government of Stephen Harper issued a formal statement of support for the *Declaration*. In that November 2010 statement, the Government of Canada said that it had

...listened to Aboriginal leaders who have urged Canada to endorse the Declaration and we have also learned from the experience of other countries.ⁱⁱⁱ

It is worth noting in the expression of confidence the explicit reference to the government having reviewed and reconsidered the *Declaration* in light of the dialogue and research it had undertaken.

For the past decade, the *Declaration* has been considered a consensus international instrument. This has been reaffirmed by ten unanimous resolutions at the UN General Assembly, including the adoption by consensus of the outcome document of the 2014 World Conference on Indigenous Peoples in which states committed to “develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.”^{iv}

Romeo Saganash’s Bill C-641, the predecessor to C-262, was tabled in the House of Commons in 2014. There has been similar implementation legislation before Parliament every year since then.

Further, the Truth and Reconciliation Commission published its *Principles for Reconciliation*, identifying the *Declaration* as “the framework for reconciliation”; the National Inquiry on Missing and Murdered Indigenous Women and Girls called for implementation of the *Declaration*; and the UN Committee on the Elimination of Racial Discrimination, the United Nations top anti-racism body, called on Canada to adopt a legislative framework for implementation. Parliament has also enacted nine new laws, in diverse policy areas, that refer to Canada’s commitments to implement the *Declaration*.

Fulfillment of human rights commitments must transcend partisan politics

Responding to Canada’s opposition to the *Declaration* between 2016 and 2010, Dr. James Anaya, the then UN Special rapporteur on the rights of Indigenous peoples, characterized the *Declaration* as “a strongly authoritative statement...having been the product of over two decades of discussion in which many States, including Canada, and indigenous peoples from around the world actively participated.”^v Dr. Anaya wrote that, “Implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification.”^{vi}

The fact that implementation has been repeatedly delayed is a matter of deep concern. Looking at this history, it is clear that Canada needs more than expressions of support for the principles

of the *Declaration*: Canada needs a legislative framework to ensure concrete, meaningful action is finally carried out.

Fulfillment of Canada's human rights obligations must rise above partisan politics. We know that this is possible. In 2019, when the BC legislature passed provincial legislation based on the model of Bill C-262, the bill was adopted with the unanimous support of all parties. Our Coalition hopes to see similar non-partisan support for Bill C-15 to ensure that this crucial human rights legislation can be passed before the end of this session of Parliament.

ANNEX: Representative Coalition statements and documents

Self-determination & Free, Prior and Informed Consent: Understanding the United Nations Declaration on the Rights of Indigenous Peoples, February 2021. tinyurl.com/FPICpaper

"Federal bill to implement UN Declaration a welcome step in the right direction", December 2020.

tinyurl.com/welcomingC15

Implementing the UN Declaration on the Rights of Indigenous Peoples: Myths and Misrepresentations, September 2020.

tinyurl.com/mythsaboutUNDRIP

ⁱ David Ljunggren, "Canada's commitment slipping, U.N. rights boss says," Reuters, 22 October 2007.

ⁱⁱ See, Paul Joffe, "UN Declaration on the Rights of Indigenous Peoples: Canadian Government Positions Incompatible with Genuine Reconciliation", (2010) 26 N.J.C.L. 121, at 177 and Gloria Galloway, "Back UN on native rights, Ottawa urged" Globe and Mail (8 June 2007) at A1.

ⁱⁱⁱ <https://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>

^{iv} UN General Assembly, *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, U.N. Doc. A/RES/69/2, 25 September 2014, para. 8.

^v Human Rights Council, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya – Addendum Cases examined by the Special Rapporteur (June 2009 – July 2010)*, U.N. Doc. A/HRC/15/37/Add.1, 15 September 2010.

^{vi} James Anaya, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Expert Mechanism on the Rights of Indigenous Peoples*, 15 July 2010.