

February 9, 2021

**This is what we fought for:**

## **An open letter in support of implementing the UN Declaration on the Rights of Indigenous Peoples**

For more than two decades, Indigenous leaders and human rights advocates fought to have the *UN Declaration on the Rights of Indigenous Peoples* adopted by the United Nations. Our goal was always to use the *Declaration* to bring about fundamental changes for the treatment of Indigenous peoples around the world including in Canada.

The Canadian Parliament is now debating a proposed new law that, if passed, would begin the process of collaborative implementation of the *UN Declaration*.

This bill, *Bill C-15: An Act Respecting the United Nations Declaration on the Rights of Indigenous Peoples*, is a unique opportunity to advance our rights and confront the harms to our people created by colonialism, racism and other forms of discrimination.

This is what we fought for.

### ***The United Nations Declaration on the Rights of Indigenous Peoples***

The purpose of the *UN Declaration* was always to hold governments accountable for recognizing, respecting and upholding our inherent rights as Indigenous peoples.

This includes the right to self-determination.

During the long process of negotiating the *UN Declaration*, many national governments tried to change the text in ways that would water down this right. However, Indigenous peoples fought against any language that would create a lesser standard of self-determination – and we succeeded.

Article 3 of the *Declaration* states that Indigenous peoples have the right to self-determination. There are no conditions or qualifiers in this Article. When you read the *Declaration* as a whole, it is also clear that the right to self-determination set out in Article 3 is the same right protected for all peoples in the UN Charter and the UN's core human rights Treaties.

The right to self-determination is a constant thread throughout the whole *Declaration*. It is found in articles that affirm our right to determine our own development strategies (Article 23) and to control our education systems (Article 14); our lands, territories and resources (Article 26); and our traditional knowledge (Article 31).

The *Declaration* also protects against racism and discrimination, including in its affirmation that Indigenous persons have “an equal right to the enjoyment of the highest attainable standard of physical and mental health (Article 24).”

The *Declaration* was drafted with the awareness that Indigenous peoples in many regions of the world have entered into Treaties and other agreements recognizing their rights. The *Declaration* calls on states to honour, respect, and enforce such Treaties (Article 37).

The *Declaration* also explicitly states that measures to implement the *Declaration* can never be used as an excuse to try to undermine or diminish any rights of Indigenous peoples, including those protected by Treaties.

### **Bill C-15**

Bill C-15 is completely consistent with the *UN Declaration*. Bill C-15 does not attempt to interpret the *UN Declaration* or alter its status as a global human rights instrument. Bill C-15 is about the federal government living up to the standards contained in the *Declaration*.

Bill C-15 builds on Bill C-262, the private Member’s bill tabled by Romeo Saganash and championed by Indigenous advocates across Canada. Bill C-262 was passed by the House of Commons in 2018 but it never reached the final stage of becoming law because of procedural manoeuvres by Conservative Senators.

Bill C-15 requires the current government – and future governments – to work collaboratively with Indigenous peoples to develop a national implementation plan with priorities and deadlines, as well as to bring federal laws into line with the requirements of the *Declaration*.

These were the same key provisions found in C-262. However, Bill C-15 in some ways goes beyond Bill C-262, including the legal provision that an implementation plan “must include measures to address injustices, combat prejudice and eliminate all forms of violence and discrimination, including systemic discrimination.”

The introductory paragraphs of Bill C-15, its preamble, recognize that self-determination is an inherent right of Indigenous peoples. The preamble also rejects all “doctrines, policies and practices” of racial superiority. This includes the doctrines of Discovery and *Terra Nullius* that were the foundation of Canada’s colonial laws and policies.

It should be emphasized that the preamble has legal significance for the interpretation of the Bill and can be used by Indigenous peoples in any dealings with the federal government.

Some commentators have mistakenly claimed that Bill C-15 tries to limit the *Declaration* to the confines of current interpretations of section 35 of the Constitution. This is false. Nowhere does the Bill limit how the *Declaration* can be interpreted and applied.

The Bill does include a standard clause, known as a “non-derogation clause”, that says that the Bill itself cannot be interpreted in a way that would take away rights already recognized under Section 35. Indigenous peoples have fought to have non-derogation clauses included in all federal legislation concerning our rights.

Other commentators have argued that Article 46(1) of the *Declaration* could be used to undermine Indigenous peoples’ rights, including self-determination and Indigenous peoples’ Treaties. Nothing could be further from the truth. The *Declaration* itself is clear that it cannot be used to diminish or take away rights. Furthermore, Bill C-15 contains strong language on self-determination and Treaty rights. This represents significant progress.

### **Moving forward**

When the *Declaration* was first brought to a vote at the United Nations, the Harper government tried to block its adoption. The federal government continued to oppose the *Declaration* for years before finally reversing its position. After Bill C-262 was passed by the House of Commons, a small group of Conservatives used stalling tactics to prevent it coming to a final vote in the Senate. Now that the federal government has brought forward the new implementation bill that it had promised, a group of provinces have begun lobbying against it.

Advances in the recognition of Indigenous peoples’ rights continue to be opposed by those forces who want to keep our peoples’ in a state of colonial dependency. Unfortunately, there has been a lot of misinformation about the *Declaration*.

In our view, as Indigenous activists, scholars and leaders who have been deeply engaged in the long struggle to advance the *Declaration*, passage of Bill C-15 would create an important foundation for confronting colonialism and addressing the urgent needs of our Nations and communities. We cannot allow misinformation to stand in the way of realizing our fundamental human rights.

The opportunity to make fundamental progress in advancing the rights of Indigenous peoples is within our grasp. We must seize this moment.

### **Signed by:**

Romeo Saganash, former M.P.

and Dialogue Centre, Professor of Law,  
University of British Columbia

Chief Willie Littlechild, former  
Commissioner, Truth and Reconciliation  
Commission of Canada

Ellen Gabriel, Kanien'kehá:ka Activist from  
Kanehsatà:ke

Professor Mary Ellen Turpel-Lafond (Aki-  
Kwe), Director, Residential School History

Leah Gazan, M.P.

Professor Sheryl Lightfoot, Canada Research  
Chair of Global Indigenous Rights and  
Politics, University of British Columbia

Brenda Gunn, Law Professor

Professor Naiomi Metallic, Chancellor's  
Chair in Aboriginal Law and Policy,  
Dalhousie University

Hup-Wil-Lax-A Kirby Muldoe  
Professor Lori Campbell, Director of  
Shatitsirótha' Indigenous Student Centre at  
the University of Waterloo

Grand Chief Abel Bosum, Cree Nation  
Government

Matthew Coon Come, former National  
Chief, former Grand Chief Cree Nation  
Government

Ted Moses, former Grand Chief Cree Nation  
Government, former Cree Nation  
Ambassador to the United Nations