



Submission to the House of Commons Standing Committee on Indigenous and Northern Affairs

**BILL C-15: AN ACT RESPECTING THE UNITED NATIONS
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

APRIL 2021



About Inuit Tapiriit Kanatami

Inuit Tapiriit Kanatami (ITK) is the national representative organization for the 65,000 Inuit in Canada, the majority of whom live in Inuit Nunangat, the Inuit home land encompassing 51 communities across the Inuvialuit Settlement Region (Northwest Territories), Nunavut, Nunavik (Northern Québec), and Nunatsiavut (Northern Labrador). Inuit Nunangat makes up nearly one third of Canada's landmass and 50 percent of its coastline. ITK represents the rights and interests of Inuit at the national level through a democratic governance structure that represents all Inuit regions. ITK advocates for policies, programs, and services to address the social, cultural, political, and environmental issues facing our people.

ITK's Board of Directors are as follows:

- Chair and CEO, Inuvialuit Regional Corporation
- President, Makivik Corporation
- President, Nunavut Tunngavik Incorporated
- President, Nunatsiavut Government

In addition to voting members, the following non-voting Permanent Participant Representatives also sit on the Board:

- President, Inuit Circumpolar Council Canada
- President, Pauktuutit Inuit Women of Canada
- President, National Inuit Youth Council

Vision

Canadian Inuit are prospering through unity and self-determination.

Mission

Inuit Tapiriit Kanatami is the national voice for protecting and advancing the rights and interests of Inuit in Canada.

Background

Inuit Tapiriit Kanatami (ITK) welcomes Bill C-15 as a promising opportunity to close legislative and policy gaps that contribute to human rights violations against Inuit, as well as for preventing discrimination and providing recourse and remedy for human rights violations experienced by our people. ITK worked positively and constructively with the federal government on the development of Bill C-15 within a relatively short timeframe for legislative development as well as within the parameters of the government's legislative mandate. Recognizing these limiting factors, Bill C-15 should be further strengthened by amending it to include provisions that enable the creation of an independent Indigenous Human Rights Commission.

Federal legislation is necessary to implement the UN Declaration in Canada. While many articles of the UN Declaration are already recognized as binding rules of customary international law, affirmation of the UN Declaration in domestic statute provides additional guidance on the legal effect of the rights affirmed by the UN Declaration. In the absence of legislation, Indigenous peoples are likely to continue to seek implementation of the UN Declaration in courts and in administrative tribunals.

The UN Declaration fills the gap that previously existed in the international human rights regime as an instrument that promotes and protects the distinct status and rights of Indigenous peoples. The adoption of the UN Declaration by the UN General Assembly curbed attempts by traditional international law to subsume Indigenous peoples and entrench a colonial view of Indigenous nations, peoples and communities. After 25 years of dialogue and negotiation between Indigenous peoples and Member States, the international community managed to finalize every article affirmed in the UN Declaration.

Human rights experts associated with the UN recognized this gap in the human rights regime. Indigenous peoples worked to create political pressure to respond to the alarming and urgent human rights violations facing Inuit in the Arctic and Indigenous peoples elsewhere in the world. In this regard, it must be noted that Inuit representatives prioritized this work through the Inuit Circumpolar Council and participated directly, actively, and consistently in the important human rights standard setting exercise from 1982 until the adoption of the UN Declaration in 2007. Inuit were motivated by the need to develop a human rights framework that safeguards our people and the integrity of our communities.

The rights affirmed in the UN Declaration are not “new” rights, but rather rights that have been recognized in domestic law in numerous countries across the globe and in international law. The outcome of the UN Declaration provides the distinct cultural context of Indigenous peoples, both as individuals and as collectives with important economic, social, cultural, spiritual, and political rights that are responsive to our distinct status and rights as Indigenous peoples.

IMPLEMENTING THE UN DECLARATION IN CANADA

ITK has invested considerable time and expertise in developing solutions for implementing the UN Declaration in Canada. The following ITK publications provide national Inuit positions on implementation of the UN Declaration:

- Inuit Tapiriit Kanatami Position Paper: Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada (January 2017)
- Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada through comprehensive legislation (April 2017)
- Inuit Tapiriit Kanatami Position Paper: Establishing an Indigenous Human Rights Commission through Federal UN Declaration Legislation (2020)

Bill C-15 is largely responsive to ITK positions and recommendations, including ITK's recommendation that Canada adopt a legislative approach to effectively implement the UN Declaration and develop an associated action plan to coordinate and support its implementation.¹

However, Bill C-15 should be strengthened by ensuring that the rights affirmed by the UN Declaration are enforceable. This is necessary to ensure that the rights affirmed by the UN Declaration are not interpreted as aspirational goals but rather that Canada's commitment to align its laws with the UN Declaration is accompanied in the Bill by a corresponding enforcement mechanism that supports their enjoyment.

The establishment of an independent Indigenous Human Rights Commission through Bill C-15 was beyond the scope of this government's legislative mandate. However, Bill C-15 can and should be amended to create a pathway for the establishment of an independent Indigenous Human Rights Commission. ITK maintains its position that establishing an independent Indigenous Human Rights Commission consistent with the UN Paris Principles is the most effective means for providing recourse and remedy to Indigenous peoples whose rights have been violated, as well as for promoting those rights, independently monitoring their implementation, and ensuring the harmonization of national legislation.

Such a Commission is necessary to ensure that Bill C-15 achieves its intended purpose and avoids setting a discriminatory double standard in the way Canada interprets its human rights obligations. Canadians whose rights under the Canadian Human Rights Act have been violated in certain situations can seek recourse and remedies through the Canadian Human Rights Commission. The Canadian Human Rights Commission is a pivotal enforcement mechanism that helps ensure that the rights affirmed in the Canadian Human Rights Act are enforceable. The inclusion of provisions in Bill C-15 that similarly provide a pathway for establishing an Indigenous Human Rights Commission are necessary to ensure that Indigenous human rights are also enforceable.

Furthermore, the recent experiences of some Indigenous peoples in British Columbia suggests that even with provincial UN Declaration legislation in place in that jurisdiction, the absence of such an independent enforcement and monitoring mechanism has resulted in the government continuing to monitor its own conduct and, in some instances, continuing to violate the human rights of Indigenous peoples.

¹ Inuit Tapiriit Kanatami, Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada through comprehensive legislation (April 2017), <https://www.itk.ca/wp-content/uploads/2017/04/Discussion-Paper-Implementing-UNDRIP-in-Canada-through-Comprehensive-Legislation.pdf> .

PROPOSED AMENDMENTS TO BILL C-15

ITK proposes amending section 6 of the Bill as follows:

Action plan

6 (1) The 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.

Content

(2) The action plan must include

(a) measures to

(i) 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, and

(ii) promote mutual respect and understanding as well as good relations, including through human rights education; and

(b) ~~measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.~~ establish an Indigenous Human Rights Commission

(i) The Minister shall, in accordance with this section, in consultation and collaboration with Indigenous Peoples, develop a Federal Strategy to Establish an Indigenous Human Rights Commission, where Commissioners are appointed on a distinctions-basis, with First Nations, Inuit and Metis peoples represented on the Commission, and by approval of the Governor in Council, seek consequential amendments to another Act.

(ii) Content

The strategy must include

(a) the mandate, powers, duties and functions of an Indigenous Human Rights Commission, and

(b) the provision of resources required to establish an independent Indigenous Human Rights Commission, and

(c) determination of the place of an established office of an Indigenous Human Rights Commission, and

(d) the required procedure and time frame to establish the Indigenous Human Rights Commission.

(iii) Time Limit

The consultation, preparation and completion of the strategy must be completed as soon as practicable, but no later than three years after the day on which this section comes into force.

(iv) Advisory Committee

The Minister must establish a distinctions-based advisory committee, with First Nations, Inuit, and Metis representatives, to provide advice on appointments to the Indigenous Human Rights Commission.

(v) Appointment of Commissioners

On the recommendation of the Minister made after consultation with Indigenous governments and other Indigenous governing bodies and organizations, the Governor in Council is to establish an Indigenous Human Rights Commission.



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