

# Legislative framework essential for UN declaration

The United Nations Declaration on the Rights of Indigenous Peoples and MP Saganash's corresponding bill are not 'aspirational.'

By PAUL JOFFE, SHERYL LIGHTFOOT *Hill Times*, Jan. 10, 2018, p. 13  
*Truth and reconciliation*

The United Nations Declaration on the Rights of Indigenous Peoples provides a crucial framework to achieve reconciliation. In December, NDP MP Romeo Saganash opened the second reading debate on his private member's bill C-262, with support from the Trudeau government. In *The Hill Times* (Dec. 14, online), Dwight Newman and Ken Coates assert that Bill C-262 on the UN declaration "could have wider-ranging effects than any private member's bill ever introduced."

The article is alarmist, misleading and confusing. It shows a lack of understanding of international law, including the UN declaration. It questions the utility of implementing with a legislative framework. The authors mischaracterize the declaration and Indigenous peoples' rights as "aspirational."

No mention is made of Indigenous peoples' inherent human rights or the supportive jurisprudence of UN treaty bodies. The declaration affirms minimum standards for the survival, dignity, security and well-being of Indigenous peoples around the globe. However, it is reduced by the authors to "a ceiling for Indigenous engagement."

In the House of Commons debate, Saganash emphasized "it is important that we remind ourselves that Indigenous peoples' fundamental rights in this country are indeed human rights."

Key elements of Bill C-262 include: repudiation of colonialism and doctrines of superiority; affirmation that the standards in the UN declaration have application in Canadian law; and review and reform of federal legislation to ensure consistency with the UN declaration.

International human rights instruments are generally drafted in broad terms to take into account a wide range of situations both foreseen and unforeseen. This does not limit their applicability; rather, it has the opposite effect. For example, in hundreds of cases Canadian courts have cited the Universal Declaration of Human Rights. In regard to the UN declaration, the same has begun to occur in Canada and abroad.

The UN declaration is a consensus international human rights instrument. No state in the world formally objects. To date, the UN General Assembly has reaffirmed it eight times by consensus. The declaration is the longest discussed and negotiated human rights instrument in UN history.

For more than 20 years, Canada actively participated and offered a wide range of concerns and proposals.

When the previous government endorsed the UN declaration in November 2010, it declared: “We are now confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework.” Yet the authors express concern that the UN declaration “did not take into account the complexities of constitutional, legal, and political relations between Indigenous peoples and the Government of Canada.”

The authors emphasize that “[p]olicy reform is urgently required.” Yet they claim that “adopting UNDRIP could cause uncertainty and impede the slowly developing legal and political partnerships unfolding in Canada.” Indigenous peoples, human rights defenders, scholars and legal experts have expressed precisely the opposite position. A legislative framework will cement the UN declaration as the blueprint for positive change in this country.

In 16 of its calls to action, the Truth and Reconciliation Commission explicitly included the UN declaration. Call to Action 43 calls on “federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.” Consistent with Call to Action 44, Bill C-262 requires the government of Canada, in consultation and cooperation with Indigenous peoples, to “develop and carry out a national action plan to implement the Declaration.”

By attacking the UN declaration, the authors are also undermining the TRC’s framework for reconciliation. We appreciate that full implementation of the declaration requires long-term commitment and collaboration. As the TRC reminded us, “reconciliation is going to take hard work.”

Legislative implementation of the UN declaration will help ensure that progress made will not be easily reversed by any future government. The declaration is both a beacon and catalyst for achievement, well-being and renewed hope. Following an affirmative vote at second reading, Bill C-262 can be further scrutinized and reinforced in committee. At such time, all political parties, as well as a diverse range of Indigenous and non-Indigenous witnesses, can contribute to achieving reconciliation, justice, healing and peace in a contemporary human rights framework.

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