A line of stylized human figures is positioned at the top and bottom of the page. The top row features three figures in black and white, while the bottom row features three figures in red and yellow. Each figure is composed of simple geometric shapes: a triangle for the head, a rectangle for the torso, and thin lines for the limbs. The background is divided into four quadrants with a woven texture: dark grey (top-left), light grey (top-right), red (bottom-left), and yellow (bottom-right).

Understanding and Implementing the
**UN DECLARATION
ON THE RIGHTS OF
INDIGENOUS PEOPLES**
An Introductory Handbook

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Please note that this handbook uses the terms "**Indigenous peoples**" as it is the term that has been developed internationally and is used in the *UN Declaration on the Rights of Indigenous Peoples*. It will also use the term "**Aboriginal people**" – both terms are meant to be inclusive umbrella terms that include all constitutionally protected people including First Nations, Inuit and Métis.

DISCLAIMER: This handbook does not provide legal advice. It is meant to inform people in plain language about the *UN Declaration on the Rights of Indigenous Peoples*. The contents are provided for information purposes only.

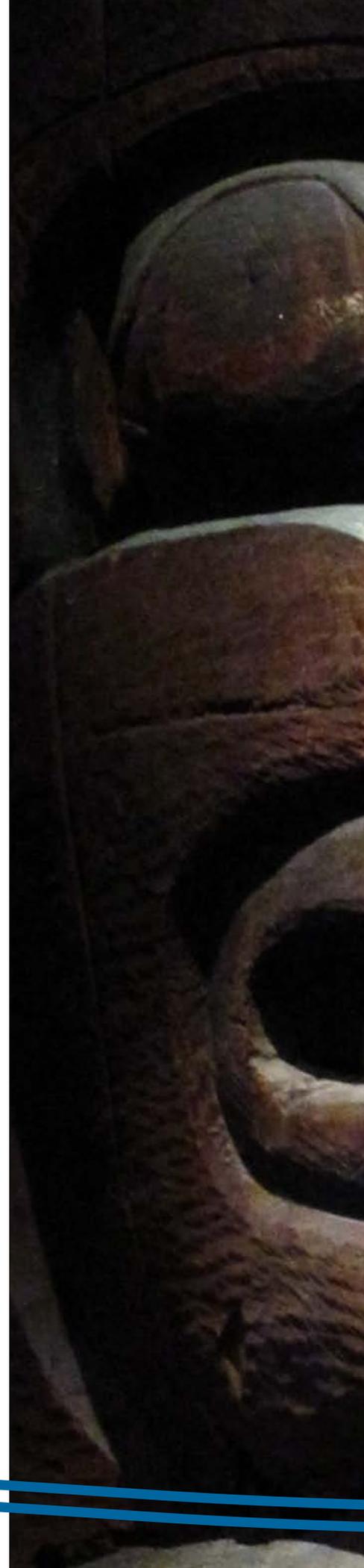




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About This Handbook

Who Should Read This Handbook:

- Aboriginal leaders, community workers and community members
- Lawyers and judges who deal with various legal issues facing Aboriginal people
- Teachers and professors
- Human rights organizations that work with Aboriginal communities
- Human rights commissions and tribunals
- Anyone else interested in learning about the UN *Declaration* and its relevance in Canada

What You Will Get From This Handbook:

- A basic understanding of the history of the UN *Declaration* and how it applies in Canada
- An introduction to some of the broad themes of rights recognized and protected in the UN *Declaration*
- A basic description and analysis of what these rights can mean for Aboriginal people
- Examples from Indigenous communities and legal systems around the world where various provisions of the UN *Declaration* have been implemented
- A list of resources to learn more in-depth information about the UN *Declaration*



This handbook is designed to assist Canadians learn about the *United Nations Declaration on the Rights of Indigenous Peoples*¹ (the *UN Declaration*), adopted by the United Nations in 2007. The next stage of work is to bring Canadian law in line with the international standards represented in the *UN Declaration*. Implementing the *UN Declaration* in Canada is key to ensure that **Indigenous peoples'** rights are fully realized. As former National Chief Phil Fontaine recognized, "The adoption of the *Declaration* by the United Nations was not an endpoint; it is the beginning. The work to see it fully implemented at home and internationally is now upon us."²

This handbook provides an introductory overview of the *UN Declaration*. As such, the handbook does not provide a comprehensive or exhaustive explanation of all rights contained in the *UN Declaration*, nor does it fully encompass all nuances. There is much more that can be said about the *UN Declaration* and its relevance in Canada. We have tried to provide enough information for people to learn the basics of the *UN Declaration* and inspire people to use the *UN Declaration* in their own work. Any omissions in the discussions should not be read to limit the rights contained in the *UN Declaration*, nor does it reflect the importance of those rights or their applicability in Canada.

We hope this handbook will assist community leaders and members, lawyers, judges, human rights commissions, academics, teachers, and all Canadians to understand what the *UN Declaration* is about and its relevance in Canada. The handbook uses various international examples to show how the *UN Declaration* has been implemented in different countries. While there are Canadian examples that could also be used, these international examples provide additional ideas for how we can use the *UN Declaration* in Canada. It is divided into themes covering various areas of Indigenous peoples' rights. Each themed section includes a description of the rights, the articles of the *UN Declaration* that correlate, and examples that are consistent with the *UN Declaration's* spirit and intent.

Although this handbook has divided the rights in the *UN Declaration* into thematic sections, the rights set out in the *UN Declaration* are meant to work together and reinforce themselves. At times, clusters of articles must be considered to maintain the integrity and understanding of the whole *UN Declaration*. As such, many of the implementation examples used in this handbook can apply to more than one thematic area.

As the handbook was designed for a wide audience, we have tried to avoid using too many technical terms and explanations, while offering a legally sound interpretation of the *UN Declaration*. We hope the information provided will be useful to non-legal audiences, yet also provide enough information for lawyers, judges, tribunal staff, and others to understand the legalities of the *UN Declaration*.

For non-legal audiences, a glossary of technical terms is provided at the back, and technical terms are placed in **bold** the first time they are used. Both "Indigenous peoples" (the international term) and "Aboriginal people" (the term used in the Canadian Constitution) will be used to include all First Nations, Inuit and Métis people. For readers who wish to learn more about the *UN Declaration*, a list of resources is included at the end of the document. Finally, for those who want to undertake more in-depth legal research, the handbook includes many legal citations.

Background to the UN *Declaration*

- The UN *Declaration* sets out the minimum rights of Aboriginal people
- The **preamble** provides a background to the UN *Declaration*, including its purpose and how to interpret the rights
- The articles set out the rights – they are the heart of the UN *Declaration*
- Articles should be read together - we must not think of each article as separate from other articles
- The UN *Declaration* recognizes rights of individual Aboriginal people – but also recognizes that some rights are collective rights, belonging to entire communities or nations or peoples
- The UN *Declaration* should be read with other international human rights **instruments** to understand the full range of Aboriginal people's rights

The UN *Declaration on the Rights of Indigenous Peoples* became part of international law when it was adopted by a majority vote of the United Nations (UN) **General Assembly** on September 13, 2007. This day “will be remembered as a day when the United Nations and its Member **States**, together with Indigenous peoples, reconciled with past painful histories and decided to march into the future on the path of human rights.”³ The adoption of the UN *Declaration* represents a major turning point for the recognition and protection of Indigenous peoples' rights within the United Nations and international legal systems.

The UN *Declaration* took over 20 years to negotiate and work its way through the UN system. Over the years there was involvement by States, UN agencies and, importantly, Indigenous peoples. In 1984, the Working Group on Indigenous Populations started drafting the UN *Declaration* with the participation of States and Indigenous peoples. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities approved the first draft of the UN *Declaration* in 1994. The next step was for the Commissions on Human Rights to consider the UN *Declaration*. In 1995, the Commission established the Intersessional Working Group on the Draft Declaration to continue finalizing the text of the UN *Declaration*. The Working Group, again with States and Indigenous peoples' participation, spent the next eleven years clarifying and revising the draft text. In 2006, the Working Group draft was submitted to the **Human Rights Council**, who approved the text. The final step was for the text to be approved by a majority vote in the General Assembly once a vote was called – where each UN member-State would get to vote on the UN *Declaration*. In response to a resolution supported by many African states, the vote on the UN *Declaration* by the General Assembly was deferred for further consultations.

On the day of the General Assembly vote, an overwhelming majority of States (144) voted in favour of the UN *Declaration*, while four States (Australia, Canada, New Zealand, and the United States) voted against the UN *Declaration*. Eleven States abstained – meaning they did not vote in favour or against the UN *Declaration*. In 2009, Australia changed its position and moved to endorse the UN *Declaration*. In April 2010, New Zealand also indicated their support. On November 12, 2010, Canada issued a Statement of Support endorsing the UN *Declaration*. Finally on December 15, 2010, the United States also indicated they would support the UN *Declaration*.

The UN *Declaration* is monumental because it is the only human rights instrument created with the participation of the rights holders themselves. Further, it specifically recognizes that Indigenous peoples' rights are both collective and individual. The UN *Declaration* sets the floor for Indigenous peoples' rights – the minimum necessary to meet international human rights standards, not a ceiling. States are free to apply higher standards or stronger rights than those set out in the UN *Declaration*.

The UN *Declaration* and International Law

International law can be briefly described as a system of law that sets the rules for States' interactions with other States, individuals and may even govern State-corporation relationships.⁴ International human rights law, as a subset of international law, describes the rights of individuals and peoples that States must uphold. International law is sometimes divided into "binding" and "non-binding" rules or "hard law" and "soft law," although it should be noted that not all scholars, lawyers and international bodies agree with the distinction between hard and soft law, in part because it does not properly address the nuances of international law.⁵

Binding rules or "hard law" are set out in international treaties or are found in customary international law. These rules can be directly enforced against States if they fail to uphold their obligations. However, the body of international law is made up of many other instruments and norms including soft law or non-binding norms.

Declarations, such as the *Universal Declaration of Human Rights* and the *UN Declaration on the Rights of Indigenous Peoples* were created through resolutions of the General Assembly. As opposed to treaties or **conventions**, individual states do not need to ratify or sign declarations. Rather, States have the opportunity to vote in the General Assembly when the resolution is put forward. Resolutions are not binding on States in the same way as treaties or customary international law. Declarations "represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles."⁶

The *UN Declaration* does not create new or special rights for Indigenous peoples. Instead, the *UN Declaration* elaborated upon existing international human rights instruments and clarifies how those rights apply to Indigenous peoples given their "specific cultural, historical, social and economic circumstances."⁷ Some scholars, international lawyers and international bodies have concluded that some provisions of the *UN Declaration* reflect existing customary international law.⁸

In Canada, it is widely accepted that customary international law applies directly as part of Canadian domestic law, unless there is a specific law in Canada that states otherwise.⁹ However, before an international **treaty**, such as the ICCPR or the ICERD, becomes part of Canadian law, the Canadian government must sign (or accede to) the treaty and the treaty must have entered into force. Canadian law generally requires that the federal or provincial government must then take steps to implement (or "transform") the treaty.¹⁰ This "transformation" can occur through passing legislation which explicitly states that the purpose of the legislation is to implement the treaty. However, Canadian courts have also recognized that implementing treaties can occur in more implicit ways.¹¹ In addition to these applications of international law in Canada, Canadian courts have increasingly used international law to interpret Canadian law and have worked to ensure that Canadian law conforms to international law.¹²

As for the *UN Declaration* in Canada, even if it is not technically "binding" or enforceable in Canada, there is an expectation that Canada, and all other States, will work to ensure that our laws and policies uphold the rights set out in the *UN Declaration*.¹³ The *UN Declaration* may be enforced in Canada by using it to interpret Aboriginal peoples' rights. Furthermore, the *UN Declaration* helps interpret Canada's obligations under other international human rights treaties in relation to Indigenous peoples in Canada. As Canada recognizes, "the UN Charter and customary international law impose on all countries the responsibility to promote and protect human rights. This is not merely a question of values, but a mutual obligation of all members of the international community, as well as an obligation of a state towards its citizens."¹⁴ Here, Canada recognizes its obligation to uphold all human rights, which would include the rights of Indigenous peoples as recognized in the *UN Declaration*.

Human Rights Treaties Applicable in Canada

- Convention on the Prevention and Punishment of the Crime of Genocide (**Genocide Convention**) – ratified by Canada on 3 September 1952 and came into force 12 January 1951
- International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**) – ratified by Canada on 14 Oct 1970 and came into force on 4 January 1969
- International Covenant on Civil and Political Rights (**ICCPR**) – ratified by Canada on 19 May 1976 and came into force 23 March 1976
- International Covenant on Economic, Social and Cultural Rights (**ICESCR**) – ratified by Canada on 19 May 1976 and came into force on 3 January 1976
- Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**) – ratified by Canada on 10 December 1981 and came into force 3 September 1981
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) – ratified by Canada on 24 June 1987 and came into force 26 June 1987
- Convention on the Rights of the Child (**CRC**) – ratified by Canada on 13 Dec 1991 and came into force 2 September 1990
- Convention on the Rights of Persons with Disabilities (**CRPD**) – ratified by Canada on 11 Mar 2010 and came into force on 3 May 2008

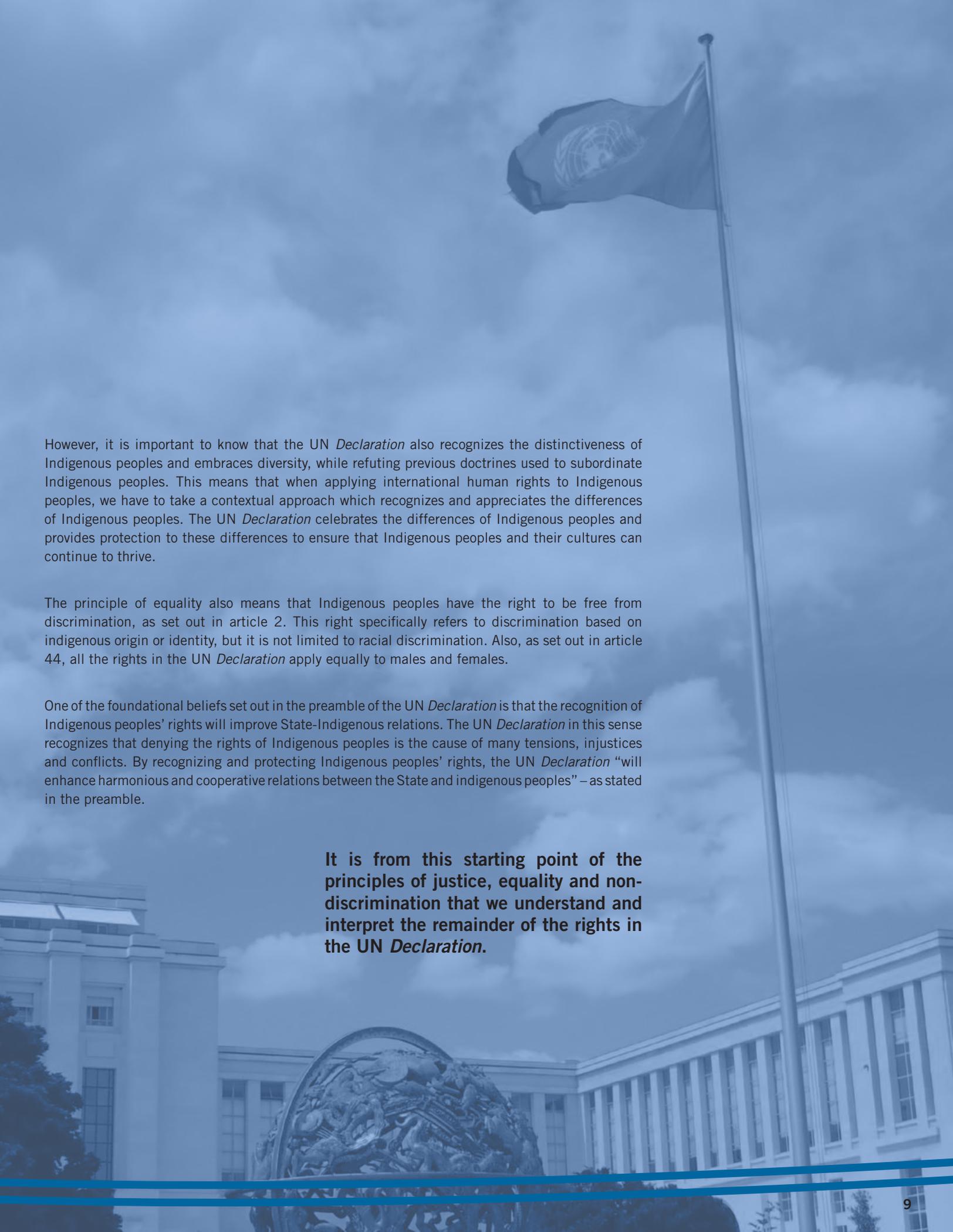
Right to Enjoyment of Human Rights and Equality

- Aboriginal people have the same human rights as everyone else in the world
- Aboriginal people can use the rights in the UN *Declaration* to explain rights in other international human rights treaties
- Aboriginal people have a right to not be treated worse than other people in Canada
- Being treated equally, doesn't always mean being treated the same – sometimes equality means that we need to treat different people differently
- Aboriginal people's cultures and differences are to be celebrated and should not be used as an excuse to deny Aboriginal peoples their basic human and other rights

One of the main drivers behind the UN *Declaration* was the persistent denial of basic human rights of Indigenous peoples.¹⁵ Injustices towards Indigenous peoples, including dispossession, colonization, and assimilation practices were justified by using racist legal doctrines that did not apply international law and human rights to Indigenous peoples. The world did not see Indigenous peoples as humans or as having rights. This failure of international law is recognized repeatedly throughout the UN *Declaration's* preamble.

Because of the ongoing violation of Indigenous peoples' rights, the UN *Declaration* and the rights contained in it are grounded in the principle of equality. This means that the UN *Declaration* confirms that Indigenous peoples are "peoples" in international law and entitled to the same human rights as everyone else. The term "peoples" recognizes the collective or group character of Indigenous peoples rights.¹⁶ As Victoria Tauli-Corpuz, Chair of the UN **Permanent Forum**, stated, "This is a Declaration which makes the opening phrase of the UN Charter, 'We the Peoples...' meaningful for the more than 370 million indigenous persons all over the world."¹⁷ The UN *Declaration* does not create new or special rights just for Indigenous peoples. Rather, the UN *Declaration* is necessary to rectify the ongoing denial and violation of Indigenous peoples' existing and inherent human rights.

The preamble and articles 1 and 2 of the UN *Declaration* affirm that Indigenous peoples, as groups and individuals, are entitled to the same human rights as all other peoples around the world. These fundamental rights include those set out in the *Charter* of the United Nations, the *Universal Declaration of Human Rights*,¹⁸ and other international human rights treaties and law. So the UN *Declaration* explicitly connects Indigenous peoples' rights to existing international human rights law. In this sense, the UN *Declaration* can be "an interpretive document that explains how existing human rights are applied to Indigenous peoples and their contexts."¹⁹



However, it is important to know that the UN *Declaration* also recognizes the distinctiveness of Indigenous peoples and embraces diversity, while refuting previous doctrines used to subordinate Indigenous peoples. This means that when applying international human rights to Indigenous peoples, we have to take a contextual approach which recognizes and appreciates the differences of Indigenous peoples. The UN *Declaration* celebrates the differences of Indigenous peoples and provides protection to these differences to ensure that Indigenous peoples and their cultures can continue to thrive.

The principle of equality also means that Indigenous peoples have the right to be free from discrimination, as set out in article 2. This right specifically refers to discrimination based on indigenous origin or identity, but it is not limited to racial discrimination. Also, as set out in article 44, all the rights in the UN *Declaration* apply equally to males and females.

One of the foundational beliefs set out in the preamble of the UN *Declaration* is that the recognition of Indigenous peoples' rights will improve State-Indigenous relations. The UN *Declaration* in this sense recognizes that denying the rights of Indigenous peoples is the cause of many tensions, injustices and conflicts. By recognizing and protecting Indigenous peoples' rights, the UN *Declaration* "will enhance harmonious and cooperative relations between the State and indigenous peoples" – as stated in the preamble.

It is from this starting point of the principles of justice, equality and non-discrimination that we understand and interpret the remainder of the rights in the UN *Declaration*.

Right to Self-Determination and Indigenous Institutions

- Exercising the right to self-determination may have a different application for different communities
- Aboriginal communities have a right to work with the Canadian government to negotiate their relationship with Canada
- Aboriginal communities have a right to their own institutions – including in areas of justice, education, health, economic development, etc
- Negotiating treaties was, and continues to be, a way to assert the right of self-determination
- Self-determination also means that Aboriginal people get to participate in Canadian politics, including provincial and federal elections
- Self-determination includes a right to participate in international forums

Once we understand that the rights contained within the UN *Declaration* are premised on the idea that Indigenous peoples are entitled to the same human rights as others, the next set of rights to consider is the right to self-determination. Self-determination is a foundational right, without which Indigenous peoples' rights cannot be fully realized.²⁰ As Kenneth Deer, Mohawk and former co-chair of the Indigenous Peoples' Caucus, states, "All our rights either flow from or are linked to our right of self-determination. These include our right to land, our right to natural resources, our right to our language and culture, our right to our songs... 'Free, prior and informed consent' (FPIC) also flows from the right to self-determination."²¹

Article 3 of the UN *Declaration* affirms Indigenous peoples' right to self-determination. Self-determination is not new to international law, and has been already acknowledged

The Greenland Self-Government Act

Greenland, once a colony of Denmark, became a constituency in the Danish Kingdom in 1953. In 1979, in response to the demand for independence by people of Greenland, the Greenland Home Rule was established allowing for the right to elect the people's own parliament and government. Decades later, a national referendum revealed the desire for the drafted Self-Government Act, which allowed for greater autonomy and sovereignty. On June 21st, 2009, the Greenland Self-Government replaced the Home Rule government.²⁷

The Greenland Self-Government Act's preamble shows recognition for the Greenlandic people as having a right to self-determination as consistent with article 3 of the UN *Declaration*. The Act also authorizes Greenland to take responsibility for the administration of justice, the establishment of courts of law, the police, and mineral and oil resources, as consistent with the strengthening of distinct political, economic, social, and cultural institutions found in article 5 of the UN *Declaration*.²⁸

In his statement at the second session of the **Expert Mechanism on the Rights of Indigenous Peoples** in 2009, Premier Kuupik Kleist of Greenland stated "this new development in Greenland and in the relationship between Denmark and Greenland should be seen as a de facto implementation of the Declaration and, in this regard, hopefully an inspiration to others."²⁹

in a number of international instruments. These include the *Charter* of the United Nations, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *International Covenant on Civil and Political Rights* (ICCPR), and the *Vienna Declaration and Programme of Action*. As reflected in the wording of article 3, the UN *Declaration* specifically recognizes that Indigenous peoples' right to self-determination is the same right that all other peoples have, as guaranteed in these international human rights instruments. The UN bodies that supervise the implementation of the ICCPR and the ICESCR have also repeatedly confirmed that Indigenous peoples have the right to self-determination as recognized in these treaties.²²

Self-determination was one of the most contentious areas during the negotiations of the UN *Declaration*. There has been a lot of debate about what is meant by the right to self-determination. But it is safe to assume that self-determination may be exercised differently among Indigenous peoples around the world, according to their own needs and aspirations. This flexibility is reflected in the UN *Declaration's* preamble: "the situation of Indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration." However, this recognition of the differences among Indigenous peoples does not permit countries to deny them the right to self-determination when it is exercised in conformity with international law.

Special Rapporteur James Anaya provides one definition of self-determination: "understood as a human right, the essential idea of self-determination is that human beings, individually and as groups, are equally entitled to be in control of their own destinies, and to live within governing institutional orders that are devised accordingly."²³ He adds, "this does not mean that every group that can be identified as a people has a free standing right to form its own state or to dictate any one particular form of political arrangement. Rather self-determination means that peoples are entitled to participate equally in the constitution and development of the governing institutional order under which they live and, further, to have that governing order be one in which they may live and develop freely on a continuous basis."²⁴

Based on this understanding of self-determination, the right to self-determination means that Indigenous peoples are entitled to determine their relationship with the State and be involved in setting up the States' governing structure. It also means that Indigenous peoples have the right to maintain their own political systems and institutions, as stated in article 5. When there are violations of the right to self-determination, the UN *Declaration* recognizes that Indigenous peoples are entitled to a remedy.²⁵

The UN *Declaration* provides some examples of what self-determination includes for Indigenous peoples – article 4 discusses the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing these functions. Article 5 should also be considered here because it recognizes the right of Indigenous peoples to maintain their political, legal, economic, social and cultural institutions – and also the right to participate in the political, economic, social and cultural life of the country they live in.

The right to self-determination is also connected to articles 20, 33, 34 and 35. These articles include references to the right to have their own institutions and pursuing economic activities, the right to determine their own identity or membership in accordance with their own customs and traditions, the right to these institutional structures which may include legal systems, and determining the responsibilities of persons to their communities.

However, self-determination is not limited to control over these internal affairs.²⁶ There are several provisions in the UN *Declaration* that connect to international aspects of Indigenous peoples' right to self-determination. As set out in articles 6 and 36 of the UN *Declaration*, Indigenous peoples have a right to a nationality, and to maintain and develop relationships with members of their community, as well as other communities within or outside their respective country. These contacts may be for various activities and purposes, and need to be facilitated by the State with the cooperation of Indigenous people. Article 36 further recognizes that Indigenous peoples have a right to have relations with other peoples across international borders. Article 41 requires governments to work with Indigenous peoples to establish ways of ensuring Indigenous peoples participate in making decisions on issues that affect them, which would include ongoing participation in international forums. Finally, an aspect that supports a broader understanding of the right to self-determination is that the preamble also recognizes that treaties between Indigenous peoples and the State are matters of international concern and have an international character in some circumstances.

Right to Life, Integrity and Security

- Aboriginal people have a right to live and be secure in their identity as Aboriginal people
- Canadian governments are not supposed to interfere with Aboriginal cultures, and should not do anything to take Aboriginal people away from their culture
- Aboriginal people have the right to be free from racial discrimination
- Aboriginal communities have the right to not have their children removed *en masse*. If children are removed, they should still have access to their cultures
- Aboriginal communities have a right to set their own membership rules – so long as those rules don't discriminate

Kenya: Endorois Indigenous Land Rights Case

In the 1970's, the Lake Bogoria in central Kenya was an area considered to have great tourism potential due to the boiling hot springs, diverse wildlife and beautiful scenery located in the area. In order to take advantage of the possibilities, the Kenyan government evicted the Endorois people from their traditional land and homes to clear the area for development of facilities to cater to tourists. The Indigenous peoples were only allowed to access sites used for religious purposes on occasion, and were relocated to an area that was unsuitable for their traditional way of life.

In February 2010, the African Commission on Human and People's Rights found that the eviction had violated the Endorois' rights, as Indigenous people, to freedom of religion, property, health, culture, religion, and natural resources. The court accepted evidence that the lands were the traditionally occupied territory of the Endorois and ruled that the Endorois' eviction violated their human rights. They ordered Kenya to restore their historic land and provide reparation for the loss suffered.

This was the first Indigenous land rights case to be successful before the African Commission and adopted by the African Union. The Commission drew upon the UN *Declaration's* provisions to the community's right to land and natural resources, their cultural and religious rights, and their right to development.³⁶ This example demonstrates the interconnectedness of the rights within the UN *Declaration* and other international human rights instruments. This example also shows how sections of rights work together to determine violations.

Indigenous peoples have been subjected to all forms of violence, including genocide, dispossession, forced assimilation, cultural destruction, and racist propaganda. All these actions are now expressly prohibited under the UN *Declaration*. Articles 7 and 8 of the UN *Declaration* refer to Indigenous individuals' right to life, integrity, liberty and security of person. However, the second part of article 7 recognizes the collective right of Indigenous peoples to live in freedom, peace and security as distinct peoples. Between articles 7 and 8, genocide, dispossession, forced assimilation, cultural destruction, and racist propaganda are practices that violate Indigenous peoples rights as distinct peoples. States are obligated to provide mechanisms to prevent and rectify such occurrences.

Genocide is not defined in the UN *Declaration*. As such, we can turn to article I of the 1948 UN *Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)*, which provides a universally accepted definition of genocide: intentional destruction of a national, ethnic, racial and religious group, in whole or in part.³⁰ Article 1 of the *Genocide Convention* limits genocide to physical genocide (killing; causing serious bodily or mental harm; inflicting conditions meant to end life; preventing births) – it does not include cultural genocide or ethnocide. The *Genocide Convention* does list “the forcible removal of children from a group to another group” as a genocidal act. This prohibition is also directly found in article 7 of the UN *Declaration*.

While the UN *Declaration* does not specifically prohibit ethnocide or cultural genocide, the prohibition of forced assimilation and destruction of Indigenous peoples' culture is found in the definition of ethnocide provided in the 1982 UNESCO *Declaration of San José*: “the denial to an ethnic group of its right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually.”³¹ Therefore when looking at the right to life, security and integrity we can see that while there may be no specific prohibition of ethnocide or cultural genocide, the concept is covered by the protections found in articles 7 and 8.

Part of the right to life and integrity includes the recognition in article 9 that Indigenous peoples have the right to belong to an Indigenous community or Nation. The UN *Declaration* continues to stipulate that exercising this right to belong to an Indigenous nation cannot lead to any kind of discrimination. This right was one of the least controversial rights recognized in the UN *Declaration*.³²

However, the right of Indigenous peoples to determine their own membership, which is set out in article 33, was more controversial. The International Law Association's Indigenous Rights Committee noted that “it has indeed attracted quite a lot of criticism, as there are concerns that membership rules may not comply with the international human rights standards.”³³ However, citing James Anaya, they try to address those concerns by pointing out that “any assessment about a cultural practice must allow a certain deference for the group's ‘own interpretive and decision-making processes in the application of universal human rights norms, just as states are accorded such deference.’”³⁴ This again connects to the idea that the application of the rights in the UN *Declaration* will need to be adapted for regional variances. However, there may be certain basic human rights norms that cannot be ignored – this could include the equality provisions between men and women, or the right to self-determination.

A critical part of life and security is the recognition that Indigenous peoples must not be forcibly removed from their lands or territories without their free, prior and informed consent, and possibly the agreement of fair compensation. This is a key inclusion in the UN *Declaration* because the practice of removing Indigenous peoples from their lands is quite common. States often argue they need to move Indigenous peoples for economic and resource development reasons, claiming a need to ensure the economic life of the State, at the expense of Indigenous peoples' rights.³⁵

Right to Culture, Religious and Linguistic Identity

- Aboriginal people have the right to all their cultural items, including stories, artwork, songs, etc
- Governments should work with communities to return items that have been taken away without the community's agreement
- Aboriginal people have a right to perform their ceremonies and other religious activities
- Aboriginal people have a right to speak their language. The government must work with Aboriginal communities to create programs for people to learn their language
- Aboriginal people have a right to their traditional knowledge including the right to collect and use traditional medicines

Cherokee Language and Culture Revitalization

The Cherokee Nation has shown a great amount of effort towards ensuring that the Cherokee culture and language is revived and transmitted to future generations, as reflected in articles 11 and 13 of the UN *Declaration*. This includes programs such as the Cherokee Language Immersion School and the Northeastern State University degree in Cherokee Language Education and Cherokee certification test.⁴⁴ Both serve to promote the instruction of the Cherokee language in schools.

Another area in which the Cherokee language has shown revitalization is in the work done with Apple Computer Inc. to create more current technological means of communicating in Cherokee. This includes the ability to chat, blog, email, and use facebook in Cherokee⁴⁵, as well as use products such as the iPhone, iPod Touch, and iPad in Cherokee.⁴⁶ Using technology to communicate in Indigenous languages can serve as a mechanism to preserve language as well as promote the use of Indigenous languages.

Recently, Google has also added Cherokee to the list of available interface languages and has included an on-screen keyboard to search in Cherokee without a physical keyboard.⁴⁷

Online Cree Dictionary

Miyo Wahkohtowin Community Education Authority and Dr. Earle Waugh Director Center for Culture & Health Family Medicine, University of Alberta are working together to create a Cree dictionary and curriculum to promote the development of the Cree language in Canada. The Cree dictionary will translate words from English to Cree (both Syllabics and Cree written in English) and provide an explanation of how the word fits in a sentence, and associate the word with a picture, sound and a video clip. They identify "the goal of the project is to promote the learning and preservation of the Cree language. The online dictionary will have the ability to accommodate different regional Cree dialects. The system will include a database of Cree language lesson plans that will guide teachers in integrating First Nation Languages in the curriculum."⁴⁸

Assimilation of Indigenous peoples has been one of the primary aims of colonization. Assimilation has occurred in part through the restriction of access to cultural and ceremonial activities and objects. In Canada, the *Indian Act* previously outlawed the performance of certain ceremonies. However, international human rights law is gaining appreciation for Indigenous peoples and their culture. There is growing recognition that “as a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature.”³⁷ Indigenous peoples’ cultures are protected under the UN *Declaration* to counteract these assimilation goals and policies that still exist within many countries.

Article 11 recognizes that Indigenous peoples have a right to practice and revitalize their cultural traditions and customs. This protection includes

- Archeological and historical sites
- Artefacts
- Designs
- Ceremonies
- Visual and performing arts
- Literature
- Spiritual and religious traditions, and
- Customs and ceremonies.

Article 12 also includes the right to maintain and protect and have access in private to religious and cultural sites and to use and control ceremonial objects.

The protection of Indigenous peoples’ cultures and spirituality also requires States to provide redress, which may include compensation, for cultural and spiritual property taken without their free, prior and informed consent. The UN *Declaration* also obligates States to enable access and/or repatriation of ceremonial objects and human remains. The return of these items, and the negotiation process used to make decisions about the return, must be developed with the involvement of the Indigenous peoples.

One of the primary means for protecting Indigenous peoples’ cultures is the protection and promotion of Indigenous languages in the UN *Declaration*. This protection comes with the recognition that Indigenous languages are increasingly threatened: “according to UNESCO,

approximately 600 languages have disappeared in the last century and they continue to disappear at a rate of one language every two weeks. Up to 90 percent of the world’s languages are likely to disappear before the end of this century if current trends are allowed to continue.”³⁸ The concern for survival of Indigenous languages is particularly serious because “fewer and fewer children are learning indigenous languages in the traditional way, from their parents and elders. Even when the parental generation speaks the indigenous language, they do not often pass it on to their children. In an increasing number of cases, indigenous languages are used only by elders.”³⁹

Ensuring the continued use of Indigenous languages is vital “to ensuring the protection of the cultural identity and dignity of indigenous peoples and safeguarding their traditional heritage.”⁴⁰ Furthermore, the protection of Indigenous peoples’ languages directly impacts other rights: “customary laws of indigenous communities are often in their languages, and if the language is lost the community may not fully understand its laws and system of governance. Loss of language also undermines the identity and spirituality of the community and the individual.”⁴¹

Article 13 of the UN *Declaration* sets out Indigenous peoples’ right to revitalize, use, develop and pass on to future generations all their languages, histories, philosophies and writings. Language rights are collective rights. States are obligated to take effective measures to protect this right. States are also required to ensure that Indigenous peoples understand and can be understood in political, legal and administrative proceedings. This may require that adequate translation be provided.

The UN Permanent Forum expert meeting on Indigenous Languages stated their concern that, “dire as this situation is, there is a lack of awareness on the part of some Governments, indigenous peoples and the intergovernmental system of the urgency for policy measures to reverse this trend.”⁴² To ensure that Indigenous peoples’ language rights are fully realized, the Permanent Forum identified several necessary measures:

- Guaranteeing the right to mother-tongue education for indigenous children.
- Allocating the funding and resources needed to preserve and develop indigenous languages, and particularly for education.
- Translating laws and key political texts into indigenous languages so that indigenous peoples may better participate in the political and legal fields.
- Establishing language-immersion programmes for both indigenous children and adults.
- Raising the prestige of indigenous languages by promoting the use of indigenous languages in public administration and academic institutions.
- Using indigenous languages so that they are kept alive and passed down through the generations by indigenous peoples themselves.

One final aspect to consider here on the protection of Indigenous peoples’ cultures can be found in articles 24 and 31, which protect Indigenous peoples’ right to their traditional medicines, cultural heritage, traditional knowledge and traditional cultural expressions. The protection extends to human and genetic resources, knowledge of flora and fauna, and sports and traditional games. States are obligated to take steps to achieve the full realization of this right in cooperation with Indigenous peoples.

Right to Education, Public Information and Employment

- Aboriginal people and children have a right to an education. This education should not be used to take away Aboriginal peoples' cultures
- The education Aboriginal people receive should respect and promote Aboriginal people's own cultures
- Governments should make sure that schools and media do not use wrong or racist information about Aboriginal people
- Aboriginal people must also be able to teach children their traditional ways of life
- Governments should work with Aboriginal communities to make sure that there is enough financial support for education
- Aboriginal people also have a right to have their own TV, radio and newspapers – including media in their own languages

Sequoyah Schools

Sequoyah Schools, a former boarding school, has found great success since it was turned over to the Cherokee Nation in 1985. The school offers education from grades 7 to 12. Sequoyah Schools enrolls over 300 students from 42 tribes and 14 different states. To be eligible to enrol, students must be a member of a federally recognized Indian tribe or one-fourth blood descendants of such members. The Schools' mission is to "enable students to meet the challenges of their futures both academically and socially."⁵⁹ It sets out the following goals:

- Provide a stable, orderly, and controlled educational environment.
- Promote an environment of pride that will enhance student's social relationships with others.
- Provide an academic climate conducive to success and status gain.
- Provide an opportunity for students to become total citizens.
- Provide students with an opportunity to explore careers.
- Provide an educational setting promoting ethnic and cultural development.
- Create an environment that cultivates personal self-discipline and decision-making skills.⁶⁰

Admission is highly competitive, as many scholarships are awarded each year and the quality of education prepares students for university or college through its advanced programs.

Aboriginal Peoples Television Network

APTN, a television network that airs and produces programs made by, for and about Aboriginal peoples, was launched in 1992 as Television Northern Canada (TVNC). It was made available to the Canadian territories and far Northern provinces, but after several years the TVNC wanted to broadcast nationally, and applied to amend their license. In 1999 the license was granted, and TVNC was re-launched as APTN, and made available to approximately 10 million households and commercial establishments through various television service providers.

APTN is aimed at both Aboriginal and non-Aboriginal audiences of all ages, and airs 56% of its programming in English, 16% in French and 28% in a variety of Aboriginal languages. It also offers a daily news program and a weekly investigative news show. As consistent with article 16 of the UN *Declaration*, APTN supports indigenous cultural diversity by broadcasting in Aboriginal languages and cultures, and allows Aboriginal peoples to develop their own media services.⁶¹

Historically in many countries, education has been used to assimilate Indigenous peoples – taking them away from their cultures and bringing them into the dominant Western culture. Education has been a double-edged sword for Indigenous peoples: “On the one hand, they have often enabled indigenous children and youth to acquire knowledge and skills that will allow them to move ahead in life and connect with the broader world. On the other hand, formal education, especially when its programmes, curricula and teaching methods come from other societies that are removed from indigenous cultures, has also been a means of forcibly changing and, in some cases, destroying indigenous cultures.”⁴⁹ In Canada, Indian residential schools and day schools were used to assimilate Indigenous children – taking them away from their parents and/or out of their community and forcing them to Westernize.

The UN *Declaration* attempts to remedy the negative impacts of education, recognizing that “education is also an empowerment right, through which economically and socially marginalized individuals can obtain means to participate fully in their communities and economies, and in the society at large.”⁵⁰ Today, education can be “the primary means ensuring indigenous peoples’ individual and collective development.”⁵¹ Education can promote the “enjoyment, maintenance and respect of their cultures, languages, traditions and knowledge.”⁵²

The right to establish and control educational systems and institutions, to be taught in the mother tongue and in a culturally appropriate manner are all rights found in article 14 of the UN *Declaration*. States are expected to take measures to ensure that Indigenous peoples have access to such an education, including those living outside their community, when possible. This right to education is broad and should include “education through their traditional methods of teaching and learning, and the right to integrate their own perspectives, cultures, beliefs, values and languages in mainstream education systems and institutions.”⁵³ For Indigenous peoples, education “is a holistic concept incorporating mental, physical, spiritual, cultural and environmental dimensions.”⁵⁴ The articles on education, may also need to be considered with other rights, including rights to lands, territories and resources in order for Indigenous peoples’ right to education to be fulfilled.⁵⁵ Also, we should note that the right to education is afforded to males and females equally.

Indigenous peoples’ right to education found in the UN *Declaration* also relates to development of curriculum in mainstream Canadian schools. Article 15 of the UN *Declaration* recognizes that Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations and this is to be appropriately reflected in education and all public information. This means that all racist, culturally inaccurate and discriminatory references to Indigenous peoples and their cultures must be removed from curriculum and government information.

In order to ensure that Indigenous peoples can exercise their right to education, the UN Special Rapporteur recommended that governments “attach high priority to the objectives and principles of indigenous education and provide public and private agencies and institutions involved in promoting indigenous education with sufficient material, institutional and intellectual resources.”⁵⁶

In connection with ensuring that public information adequately reflects Indigenous peoples, article 16 of the UN *Declaration* sets out Indigenous peoples’ right to establish their own media in their own Indigenous languages. States must also take steps to ensure that State-owned media, like the CBC, properly reflect indigenous cultural diversity. States are also to encourage private media to do the same. In relation to media, the Special Rapporteur recommended “that the mass media regularly include content related to indigenous peoples and cultures in their programming, in a context of respect for the principles of tolerance, fairness and non-discrimination established in international human rights instruments, and that indigenous peoples and communities be given the right to have access to the mass media, including radio, television and the Internet for their own use.”⁵⁷

Cherokee Language Immersion School

As consistent with article 14 of the UN *Declaration*, the Cherokee Language Immersion School offers kindergarten to grade five entirely in the Cherokee language. Certified teachers fluent in Cherokee offer math, science, writing and other core subject areas to the 100+ students per year. Students have had great success in meeting if not surpassing the standards expected by the State. The school has even been featured as a promising national model for preserving Indigenous languages and has even been modified to teach Indigenous languages to adult students.⁵⁸

Right to Participate in Decision Making and Free, Prior and Informed Consent

- Aboriginal communities must be able to participate in making any decision that affects their lives
- Consultations must not try to coerce Aboriginal people to agree
- The government must give Aboriginal communities all the information they need to make their decision
- Aboriginal communities should be given enough time to discuss their concerns and should not be rushed into making a decision
- Consultations should only end when Aboriginal communities and the government come to an agreement
- Aboriginal people have the right to make their decisions according to their own decision-making processes

One of the major ongoing concerns for Indigenous peoples is that State governments continue to make decisions that affect Indigenous peoples with little or no input from Indigenous peoples themselves. Many provisions in the UN *Declaration* relate to Indigenous peoples' right to participate in decision-making, highlighting the importance of this principle for Indigenous peoples and their rights.⁶² These include articles 3–5, 10–12, 14, 15, 17–19, 22, 23, 26–28, 30–32, 36, 38, 40 and 41. This right to participate “in decision-making on the full spectrum of matters that affect their lives forms the fundamental basis for the enjoyment of the full range of human rights.”⁶³

Bolivia: Government Consultation with the Guarani Indigenous Peoples

In December 2009, Indigenous leaders from affected communities held a meeting with the Bolivian Ministry of Hydrocarbons and Energy (MHE) to discuss a hydrocarbon exploration project within the ancestral territory of the Guarani people of Charagua Norte and Isoso. The discussions led to the signing of a statement of understanding in January 2010 to start the consultation process.

The first consultation workshops by the MHE were found to be inadequate in giving the possible impacts and full information about the project. The timeline proposed by the MHE was also found to be badly planned and without the full participation of the Guarani Peoples Assembly of Charagua Norte and Isoso (APG) and the Guarani community. In response, the MHE addressed concerns by incorporating representatives from the APG, collaborating more closely with the APG, and revised the timeline. The MHE recognized the initial problems, and ensured consensus was reached at each phase of the consultation process before moving on to the next one.⁷²

As a result of the participatory consultation process, a binding agreement was made between the Bolivian government and the Guarani Indigenous peoples. As consistent with articles 18 and 19 of the UN *Declaration*, the success of this process shows that full consent and participation can lead to constructive outcomes.

Peru: The Right to Consultation Protected in Law

In September 2011, the President of Peru enacted a law establishing the right of the Indigenous peoples of Peru to be consulted in advance on measures that may affect their territory or community. This included any legislative or administrative measure, development or industrial project, plan or programme directly affecting the peoples' collective rights. It was the first Latin American country to approve a law for consultation.⁷³ This law was unanimously supported by the Peruvian Congress in August.

In the UN *Declaration's* recognition of the right to participate in decision-making, there is a distinction between internal and external decision making – so that Indigenous peoples have a right to make decisions internally within their own communities, but also to participate in decision-making processes and political systems within the broader Canadian State and international arenas.⁶⁴

One of the key standards for Indigenous peoples' participation in decision-making is free, prior and informed consent, or FPIC. FPIC, as a fundamental part of the UN *Declaration*, is specifically required in six articles: articles 10, 11, 19, 28, 29 and 32. FPIC has broader connections than just these six articles; Indigenous peoples identify FPIC "as a requirement, prerequisite and manifestation of the exercise of their right to self-determination, as defined in international human rights law."⁶⁵

In Canada, the right to participate in decision-making and the standard of FPIC can be used to interpret the duty of consultation and accommodation, first articulated by the Supreme Court of Canada in 2004.⁶⁶ Free, prior and informed consent has been used as the standard for decision-making and planning between governments and Indigenous peoples "by international and domestic bodies and mechanisms, including UN treaty monitoring bodies, special rapporteurs and other independent experts, UN specialized agencies, and the Permanent Forum on Indigenous Issues as well as in the Inter-American human rights system."⁶⁷ FPIC is a collective right, in which a community has the right to be engaged in the decision-making process; this necessarily includes participation of Indigenous women and sometimes children and youth, depending on the circumstance.

The Permanent Forum on Indigenous Issues held a Workshop on Methodologies for Free, Prior and Informed Consent, which included recommendations on the information necessary for Indigenous peoples to make informed decisions:

- a. The nature, size, pace, reversibility and scope of any proposed project or activity;
- b. The reason(s) for or purpose(s) of the project and/or activity;
- c. The duration of the above;
- d. The locality of areas that will be affected;
- e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;
- f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector

staff, research institutions, government employees and others);

g. Procedures that the project may entail.⁶⁸

As can be seen by the wide range of articles that reference FPIC, FPIC has wide ranging applications including as the consultation framework and negotiation of benefit sharing and mitigation measures "for projects or measures that have a substantial impact on indigenous communities, such as those resulting from large-scale natural resource extraction on their territories or the creation of natural parks, or forest and game reserves on their lands and territories."⁶⁹ The Permanent Forum Workshop also identified several different scenarios where FPIC would be applicable:

- In relation to indigenous lands and territories, including sacred sites (may include exploration, such as archaeological explorations, as well as development and use).
- In relation to treaties, agreements and other constructive arrangements between States and indigenous peoples, tribes and nations.
- In relation, but not limited, to extractive industries, conservation, hydrodevelopment, other developments and tourism activities in indigenous areas, leading to possible exploration, development and use of indigenous territories and/or resources.
- In relation to access to natural resources including biological resources, genetic resources and/or traditional knowledge of indigenous peoples, leading to possible exploration, development or use thereof.
- In relation to development projects encompassing the full project cycle, including but not limited to assessment, planning, implementation, monitoring, evaluation and closure, whether the projects are directed towards indigenous communities or, while not directed towards them, may affect or impact upon them.
- In relation to United Nations organizations and other intergovernmental organizations that undertake studies on the impact of projects to be implemented in indigenous peoples' territories.
- In relation to policies and legislation dealing with or affecting indigenous peoples.
- In relation to any policies or programmes that may lead to the removal of their children, or their removal, displacement or relocation from their traditional territories.⁷⁰

The right to participate in decision-making and FPIC also are applicable in matters that affect Indigenous peoples' rights. Articles 18, 19 and 23 of the UN *Declaration* provide for cooperative measures in order to ensure Indigenous peoples concerns are heard and actively involved in developing and possibly administering economic and social programmes. This process includes

having their own chosen representatives and own representative decision-making institutions. States are required to obtain Indigenous peoples free, prior and informed consent through their own institutions before executing measures that may affect them.

What FREE, PRIOR, and INFORMED CONSENT Means

Andrea Carmen, a member of the Yaqui Indian Nation and executive director of the International Indian Treaty Council, provides a good overview of free, prior and informed consent from Indigenous peoples' perspective:

"Free" necessarily includes the absence of coercion and outside pressure, including monetary inducements (unless they are mutually agreed on as part of a settlement process), and "divide and conquer" tactics. Indigenous peoples must be able to say "no," and not be threatened with or suffer retaliation if they do so.

"Prior" means that there must be sufficient lead time to allow information-gathering and sharing processes to take place, including translations into traditional languages and verbal dissemination as needed, according to the decision-making processes of the Indigenous peoples in question. This process must take place without time pressure or time constraints. A plan or project must not begin before this process is fully completed and an agreement with the Indigenous peoples concerned is reached.

"Informed" means that all relevant information reflecting all views and positions must be available for consideration by the Indigenous peoples concerned. This includes the input of traditional elders, spiritual leaders, traditional subsistence practitioners, and traditional knowledge holders. The decision-making process must allow adequate time and resources for Indigenous peoples to find and consider impartial, balanced information as to the potential risks and benefits of the proposal under consideration....

"Consent" involves the clear and compelling demonstration by the Indigenous peoples concerned of their agreement to the proposal under consideration. The mechanism used to reach agreement must itself be agreed to by the Indigenous peoples concerned, and must be consistent with their decision-making structures and criteria (for example, traditional consensus procedures). Agreements must be reached with the full and effective participation of the leaders, representatives, or decision-making institutions authorized by the Indigenous peoples themselves.⁷¹

Economic and Social Rights

- Aboriginal people have the right to improvements in the areas of health, education, employment, housing, vocational training and retraining, sanitation and social security
- Aboriginal communities have the right to develop and run social programs.
- Aboriginal people have the right to continue hunting, fishing and other traditional means of earning a living
- The protection over economic development is not limited to traditional activities – Aboriginal communities have a right to engage in new forms of economic development – and to make their own decisions related to economic development

Canada-First Nations Joint Action Plan

Basic services like clean drinking water, adequate housing and satisfactory education are readily available for many Canadians, but many First Nations do not have access to these basic facilities. Many reserves in Canada face constant drinking water advisories (or lack running water), housing shortages and mould problems, and a low number of graduates from high school.⁷⁸

On June 9th, 2011, an action plan aimed at improving living conditions on reserves, involving the Assembly of First Nations and the Ministry of Aboriginal Affairs and Northern Development Canada, was announced. The Joint Action Plan “begins by referencing key principles that recognize and affirm Aboriginal and Treaty rights, the United Nations Declaration on the Rights of Indigenous Peoples and support to strengthen communities recognizing our languages and cultures.”⁷⁹

The plan addressed the following areas, all of which are consistent with article 21 of the UN *Declaration*: education, accountability, transparency, capacity and good governance; economic development; and negotiation and implementation.⁸⁰ Specifically in relation to economic development, the Plan will build on “the Federal Aboriginal Economic Development Framework by establishing a Task Force on the Activation of First Nations Economies comprised of business leaders to review and provide recommendations focused on moving away from the *Indian Act* to explore concrete initiatives aimed at unlocking the economic potential of First Nations, including improvements to the additions to reserve policy.”⁸¹

Colonization has led to the economic exploitation and marginalization of Indigenous peoples. Economic impoverishment and the resultant social harms have occurred through “the loss of control over their resources, the exploitation of those natural resources in ecologically unsustainable fashion, the often brutal and forced use of indigenous labour including systematic abuse of child labour, and similar forms of discriminatory and demeaning behaviours by settlers, authorities and companies.”⁷⁴ Such injustices and their impact on Indigenous peoples’ right to development are recognized in the preamble. Article 21 of the UN *Declaration* addresses the right to the improvement of Indigenous peoples’ economic and social conditions. It recognizes the need for improvements in the areas of education, employment, housing, health and social security. States must take action to ensure the continual improvement of these conditions. This article further requires States to pay attention to the special needs of elders, women, youth, children and persons with disabilities.

One of the problems that Indigenous peoples have faced in the improvement of their social and economic conditions is that “even where national policies are targeted for the benefit of indigenous peoples, they often operate in a non-inclusive, top down manner. This situation creates dependency on government services and does not promote sustainable human development in a manner that would protect and promote the cultural, political, social and economic integrity of indigenous peoples.”⁷⁵ This problem where the government creates policies is why the UN *Declaration* requires States to consult and cooperate with Indigenous peoples before adopting and implementing legislative or administrative measures that affect Indigenous peoples.

Also related is article 23, which recognizes Indigenous peoples’ right to determine their own development priorities – with specific reference to developing health, housing and other economic and social programmes affecting them. Article 23 further provides that Indigenous peoples should be able to administer these programmes through their own institutions. The participation of Indigenous peoples in setting their development priorities is crucial because “development initiatives which take into account the identity and culture of indigenous peoples through amongst others the application of free, prior and informed consent, have a higher probability of sustainability and success.”⁷⁶

When looking to improve Indigenous peoples’ economic situation, we must consider the importance of Indigenous peoples’ traditional economic activities and means of subsistence. Article 20 discusses Indigenous peoples’ right to continue to engage in all their traditional and other economic activities. This means that economic development plans should be “based on respect for and inclusion of indigenous peoples’ world views, perspectives and concepts of development.”⁷⁷

These provisions recognize that there may be conflict between traditional economic activities and other economic activities including natural resource developments like mining and forestry. When such potential conflicts arise, the UN *Declaration* again requires that Indigenous peoples participate in planning process and their free, prior and informed consent is gained before such developments occur. Further it means that when governments take action to improve Indigenous peoples’ economic situation, these plans must properly take into account Indigenous peoples’ traditional and other economic activities.

Connected to the improvement of Indigenous peoples’ economic situation and the right to development is the right of Indigenous peoples to enjoy all labour law rights and not be subjected to discriminatory conditions of labour, as found in article 17 of the UN *Declaration*. States are also obligated to take measures to shield Indigenous children from economic exploitation.

Right to Lands, Territories and Resources

- Aboriginal people have a right to their lands, territories, and natural resources – including to own the land, and to live on and use the land
- Aboriginal communities have rights to the lands they now live on and use
- Aboriginal communities also have rights to the areas they traditionally lived on and used
- Aboriginal people also have rights to lands, territories and natural resources they acquired in other ways like treaty land entitlements or modern treaties
- Canada is required to work with Aboriginal people to set up a process that identifies and protects these lands under Canadian law
- Governments must consult with Aboriginal people before allowing any activities on Aboriginal people's lands, territories and resources

Alaskan Chickaloon Native Village

In February 2011, the Chickaloon Native Village filed a complaint (or communication) to the United Nations Independent Expert on water and sanitation regarding an open-pit coal mine in traditional Chickaloon territory. Possible contamination of water that serves as the drinking water for the local area as well as the plant and animal population, and the effects it could have on spiritual gatherings and ceremonies were key concerns stated in the submission. The community was also noted to have already spent more than a million dollars restoring a salmon spawning creek damaged by earlier coal mining. The Chickaloon case is a “test case” to see how the UN *Declaration* could be used to intervene in US development projects.⁸⁶

In May 2011, an official complaint was filed with the Organization for Economic Cooperation and Development alleging the Usibelli Coal Mine's activities were affecting ancestral lands of Indigenous peoples.⁸⁷ In July 2011, a permit renewal for development of the coal mine was withheld by a state agency after it found the company had to respond to comment from Alaska Natives.⁸⁸

The Maya Villages of Belize

For many years, the government of Belize allowed the use of Maya traditional land for logging concessions and oil exploration without the Indigenous Maya peoples' consent or regard for their customary practices. Two lawsuits were filed, which were later combined into one. The Maya claimed customary title to the lands, and asked that an order be granted to stop actions affecting their lands without their free, prior and informed consent.

The government refused the Maya property rights based on customary land occupancy, and argued that since the Maya villages developed after British sovereignty, the Maya could not establish a continuous connection with the land. Belize also argued land rights had long been extinguished.

After hearing both positions, the Belize court ruled in favour of the Maya claimants. It found that the government failed to take into account the customary patterns of use and occupancy of the Maya people to the land – rights protected by the Constitution of Belize. In its decision, it relied on international instruments, including the UN *Declaration*. It was the first court to apply the UN *Declaration* after its adoption by the General Assembly.⁸⁹

While international law was initially used to justify taking away Indigenous peoples' lands, there is growing recognition of Indigenous peoples' rights to their lands, territories and resources. International society has started to realize that Indigenous peoples' "relationship with the land and all living things is at the core of indigenous societies."⁸² Special Rapporteur Martinez Cobo, in his monumental study on the "Problem of Discrimination against Indigenous Populations" discussed Indigenous peoples' relationship with the land: "the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land, has a great many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely."⁸³ Thus severing Indigenous peoples' connection to their lands has contributed to the gradual deterioration of many Indigenous societies.⁸⁴

With these recognitions of Indigenous peoples' connections with the land, the UN *Declaration* works to renounce earlier international laws that were used to destroy that connection. The preamble of the UN *Declaration* recognizes that doctrines such as the Doctrine of Discovery and *terra nullius* are not legally valid: "all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust." Despite being disavowed, it is still important to understand these doctrines and how they dispossessed Indigenous peoples from their lands as they continue to be the basis of many modern legal doctrines: "The doctrine of *terra nullius* as it is applied to indigenous peoples holds that indigenous lands are legally unoccupied until the arrival of a colonial presence, and can therefore become the property of the colonizing power through effective occupation. The doctrine [of discovery] ... gives to the 'discovering' colonial power free title to indigenous lands subject only to indigenous use and occupancy, sometimes referred to as aboriginal title."⁸⁵

The UN *Declaration* now recognizes broad rights of Indigenous peoples to their lands, territories and natural resources. The right of Indigenous peoples to own, use, develop, and control, as well as maintain and strengthen their distinctive relationship to lands, territories and resources traditionally owned, occupied, used or otherwise acquired is found in articles 25, 26 and 27. This right includes the relationship to coastal seas and waters, and upholding responsibilities to future generations. This right applies to lands, territories and resources that Indigenous peoples possess by traditional ownership or traditional occupation or use – but also applies to lands, territories and resources that Indigenous peoples have "otherwise acquired," which could include lands gained after a relocation, settlement of a modern treaty or by purchase.

States are obligated to establish and implement a process (with the cooperation of Indigenous people affected) that gives legal recognition and protection to Indigenous peoples' rights to their lands, territories and resources. This process to provide legal protection must respect Indigenous peoples' laws, customs and ways of using land.

In addition, as described in article 30 of the UN *Declaration*, military activities are not to take place on lands or territories unless the Indigenous peoples freely agreed, or as a matter of significant public interest. States are expected to consult with affected Indigenous peoples prior to using lands for military purposes.

Conservation of the environment and protection of the productive capacity of the land, territories and resources are included in article 29 of the UN *Declaration*. States are required to establish and implement programmes of conservation and protection of the environment; ensure hazardous materials are not stored or disposed on lands without the free, prior and informed consent of Indigenous peoples; and ensure health programmes are developed and implemented for those affected by such materials.

Indigenous peoples' rights to their lands, territories and resources also necessarily include the right to determine and develop priorities and strategies for use or development of lands, territories and resources. These rights are encompassed in article 32 of the UN *Declaration*. States are obligated to consult and obtain Indigenous peoples free, prior and informed consent before approving any project that could potentially affect their lands, territories, and resources – and are to provide effective means of redress for adverse impacts and activities. Redress by way of restitution or compensation for land, territories and resources taken without the free, prior and informed consent of the Indigenous peoples affected is found in article 28. Compensation is expected to be equivalent lands, territories and resources, monetary payments, or other appropriate remedy.

Treaties, Agreements and Other Constructive Arrangements

- The UN *Declaration* recognizes that in many areas of Canada, Treaties are the basis for the relationship between Canada and Aboriginal people
- Treaties and other types of agreements provide a way forward in developing the relationship between Aboriginal people and governments
- Governments must respect and uphold all Treaties and other types of agreements made with Aboriginal people
- Nothing that is written in the UN *Declaration* can be used to take away or minimize the Treaty rights of Aboriginal people

Treaties Seminar Recommendations on Implementing Treaties

In 2003, the Human Rights Commission held an expert seminar on Treaties, Agreements and Other Constructive Arrangements, to follow up on the recommendations made by Special Rapporteur Alfonso Martinez in his report on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous “populations.” At the conclusion of the seminar, the experts agreed upon several recommendations, including recommendations to States on how to better fulfil Treaty obligations, which are now protected under the UN *Declaration*:

The experts called upon States to respect treaties, agreements and other constructive arrangements between States and indigenous peoples and, in cases where disputes arise, to establish effective mechanisms for the resolution of conflicts. Such conflict resolution processes should include, inter alia, the following elements:

- (a) They should be developed with the free, prior and informed consent of the indigenous peoples concerned;
- (b) They should include as an integral part of the process indigenous laws and legal norms;
- (c) They should be independent and free from political interference;
- (d) They should recognize the collective nature of the rights of indigenous peoples, including to their lands and resources.¹⁰¹

The experts recommended that States promote, and educate the general public, particularly through the education system, on indigenous peoples' treaties, agreements and other constructive arrangements, underlining that such treaties are sacred agreements that define the nature of indigenous peoples' relationships with the family of nations.¹⁰²

For Indigenous peoples, Treaties play an important role in determining their relationship with the State in which they live.⁹⁰ However, States have violated many of these Treaties, or never fully implemented them. Indigenous peoples have sought international assistance in the enforcement of their Treaties and other constructive agreements starting with the first Indigenous people to engage with the League of Nations (the predecessor to the United Nations) – Chief Deskaheh (Haudenosaunee) and Ratnaha (Maori Spiritual Leader). Within UN meetings, it has been acknowledged that “historic treaties, agreements and other constructive arrangements between States and Indigenous peoples have not been respected, leading to loss of lands, resources and rights, and that non-implementation threatens indigenous peoples’ survival as distinct peoples.”⁹¹

Over the past 40 years, there has been much work done within the United Nations system to promote recognition of these agreements including a report on “Treaties, Agreements and Other Constructive Arrangements between States and Indigenous ‘populations’”, by Dr. Miguel Alfonso Martinez⁹² and two Expert Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples in 2003 and 2006.⁹³ Chief Wilton Littlechild, member of the UN Expert Mechanism on the Rights of Indigenous Peoples, identifies “After years of effort, the spirit and intent of our treaties, as understood by our elders, is now reflected in the ... *Declaration*.”⁹⁴ In Canada, the spirit and intent of the historic Treaties include “Indian institutions and administration, lands and water and other resources, education and health, social assistance, police protection, economic development, hunting, fishing, trapping and gathering, as well as the right to cross international boundaries, to meet in council, and the right to shelter, mutual consent and implementation”⁹⁵ – all of which are contained within various provisions of the UN *Declaration*.

The UN *Declaration* also contains specific reference to Treaties, agreements and other constructive arrangements. Starting with the preamble of the UN *Declaration*, Treaties, agreements and other constructive arrangements with States are recognized to be the basis for strengthened partnerships between Indigenous peoples and States. The preamble also recognizes that these agreements can at times be matters of international responsibility and international character. According to article 37 of the UN *Declaration*, Indigenous peoples have the right to the recognition and enforcement of these agreements, and States must respect and honour them. The UN *Declaration* may not be used to diminish nor eliminate any rights originating and contained in these Treaties and agreements.

Article 37 is very broad in scope. It covers Treaties (which can include peace and friendship Treaties, historic numbered Treaties and modern Treaties). But it also includes “other constructive agreements” which was defined by the UN Special Rapporteur as “any legal text or other documents that are evidence of consensual participation by all parties to a legal or quasi-legal relationship.”⁹⁶ Other types of agreements that could fall within the scope of article 37 include land use agreements (if they are between an Indigenous community and a State) and treaty settlement agreements.⁹⁷

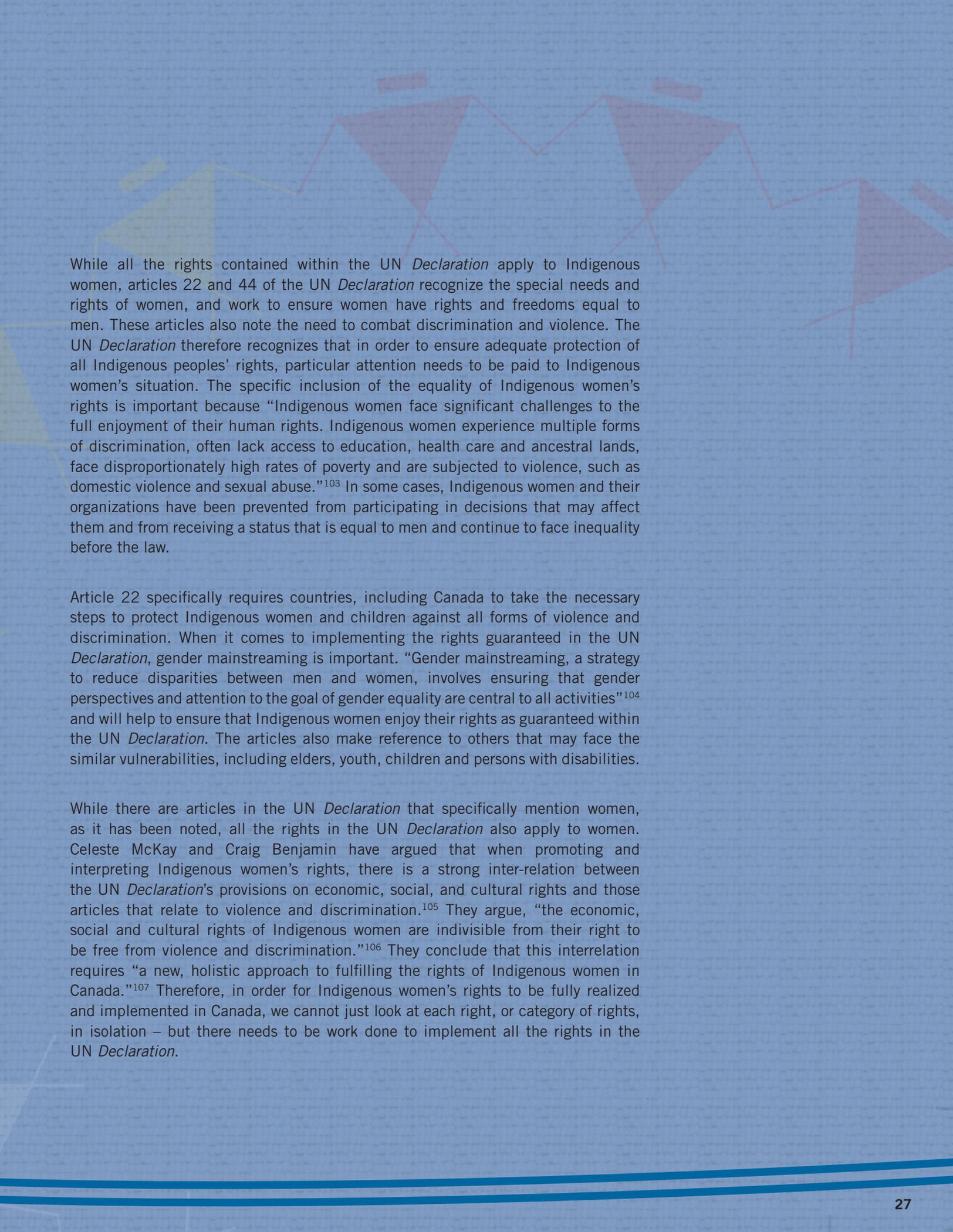
When interpreting the rights contained in Treaties, agreements and other constructive arrangements, it is important to “emphasize and assert indigenous peoples’ own understanding of the treaties negotiated by treaty nations, as documented and evidenced by indigenous peoples’ oral histories, traditions and the concepts expressed in their own languages.”⁹⁸ These oral histories provide an interpretation of the original spirit and intent of the Treaties.⁹⁹ The UN *Declaration* includes the right to the enforcement of these agreements, which is important because they provide conflict-resolution processes and can provide a framework for reconciliation between Indigenous peoples and the nation-States.¹⁰⁰

Indigenous Women's Rights

- Aboriginal women are entitled to all the rights in the UN *Declaration*
- When implementing policies and programs, it is important to make sure Aboriginal women's particular needs, if any, are addressed
- The government must work with Aboriginal people to end violence against Aboriginal women

First International Indigenous Women's Environmental & Reproductive Health Symposium

The International Women's Environmental and Reproductive Health Symposium was held from June 30-July 1, 2010 in Alamo, California. The Symposium was held to share information, address the impacts of toxic contamination on Indigenous peoples, particularly women and children, and share strategies on how to address these impacts on health, the environment, and human rights. A declaration was affirmed by the consensus of the Symposium participants. This declaration was adopted for the health, survival and defense of lands, rights and future generations. It included reference to the UN *Declaration*, specifically to the rights that protect health, land, resources, languages, culture, subsistence, self-determination, and the importance of transmitting knowledge to future generations.¹⁰⁸ It was one of the first declarations out of such meetings where all the articles of the UN *Declaration* were affirmed by consensus of all participants.



While all the rights contained within the UN *Declaration* apply to Indigenous women, articles 22 and 44 of the UN *Declaration* recognize the special needs and rights of women, and work to ensure women have rights and freedoms equal to men. These articles also note the need to combat discrimination and violence. The UN *Declaration* therefore recognizes that in order to ensure adequate protection of all Indigenous peoples' rights, particular attention needs to be paid to Indigenous women's situation. The specific inclusion of the equality of Indigenous women's rights is important because "Indigenous women face significant challenges to the full enjoyment of their human rights. Indigenous women experience multiple forms of discrimination, often lack access to education, health care and ancestral lands, face disproportionately high rates of poverty and are subjected to violence, such as domestic violence and sexual abuse."¹⁰³ In some cases, Indigenous women and their organizations have been prevented from participating in decisions that may affect them and from receiving a status that is equal to men and continue to face inequality before the law.

Article 22 specifically requires countries, including Canada to take the necessary steps to protect Indigenous women and children against all forms of violence and discrimination. When it comes to implementing the rights guaranteed in the UN *Declaration*, gender mainstreaming is important. "Gender mainstreaming, a strategy to reduce disparities between men and women, involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities"¹⁰⁴ and will help to ensure that Indigenous women enjoy their rights as guaranteed within the UN *Declaration*. The articles also make reference to others that may face the similar vulnerabilities, including elders, youth, children and persons with disabilities.

While there are articles in the UN *Declaration* that specifically mention women, as it has been noted, all the rights in the UN *Declaration* also apply to women. Celeste McKay and Craig Benjamin have argued that when promoting and interpreting Indigenous women's rights, there is a strong inter-relation between the UN *Declaration's* provisions on economic, social, and cultural rights and those articles that relate to violence and discrimination.¹⁰⁵ They argue, "the economic, social and cultural rights of Indigenous women are indivisible from their right to be free from violence and discrimination."¹⁰⁶ They conclude that this interrelation requires "a new, holistic approach to fulfilling the rights of Indigenous women in Canada."¹⁰⁷ Therefore, in order for Indigenous women's rights to be fully realized and implemented in Canada, we cannot just look at each right, or category of rights, in isolation – but there needs to be work done to implement all the rights in the UN *Declaration*.

Implementation and Interpretation

What can you do to promote implementation of the *Declaration*?

- Aboriginal organizations can adopt the UN *Declaration* and ensure all their policies and procedures uphold the standards
- Non-Aboriginal and non-governmental organizations can work with Aboriginal organizations to lobby government and industry to use the UN *Declaration*
- Governments and companies can use the UN *Declaration* as the framework to guide their work with Aboriginal communities
- Lawyers litigating and negotiating on behalf of Aboriginal people can argue for Canadian law to be interpreted in line with the UN *Declaration*
- Courts, tribunals and human rights commissions can cite the UN *Declaration* when making decisions relating to Aboriginal people and ensure Canadian law upholds the rights set out in the UN *Declaration*
- Teachers, professors and other educators can include information on the UN *Declaration* in their classes to help educate all Canadians on the UN *Declaration* and its significance in Canada

Implementation of the UN *Declaration* in Bolivia

Bolivia was the first country to implement the UN *Declaration*, in both National Law and the new Constitution. In 2008, the UN *Declaration* was adopted as National Law No. 3760.¹¹⁵ The Legislation is an exact copy of the UN *Declaration*.¹¹⁶ In 2009, the new Bolivian Constitution was passed.¹¹⁷ The Constitution incorporates rights found in the UN *Declaration*, including linguistic rights, rights to self-determination and self-government, and rights to basic services like education, housing and health care.¹¹⁸

Grand Council of Micmacs Accede to the UN *Declaration*

On July 27, 2008, the Grand Council of Micmacs acceded to the UN *Declaration* and decided that the UN *Declaration* would be a guide to the interpretation and implementation of Mi'kmaw self-determination, collective rights and responsibilities. They accepted the responsibilities of self-determination as set out in the UN *Declaration*. In their statement of accession, they called upon Canada, the Member States of the United Nations, and the United Nations Organization to cooperate with them in their efforts to exercise and enjoy fully their rights as Indigenous people. Finally, the Grand Council pledged to strive, by teaching and education, to promote respect for, and progressive implementation of the rights and freedoms of Indigenous peoples as set out in the *Declaration*, within their own territory, within their own region, and abroad.

Implementation of the UN *Declaration* will be key for the full and effective realization of Indigenous peoples' rights. As Victoria Tauli-Corpuz so eloquently stated on the day of the vote in the General Assembly, "effective implementation of the *Declaration* will be the test of commitment of States and the whole international community to protect, respect and fulfill indigenous peoples' collective and individual rights."¹⁰⁹ However, when looking to implement the UN *Declaration*, Kenneth Deer provides good advice: "you do not ask for rights; you assert them. When rights are asserted, they grow... Indigenous peoples must assert and exercise our inherent rights. Exercising our rights is what makes us who we are."¹¹⁰ So to implement the UN *Declaration*, we must not sit around waiting for the government to take action to recognize these inherent rights. Indigenous peoples can refer to the UN *Declaration* when pursuing recognition of their rights – and when judging government actions.

The UN *Declaration* applies in many ways here in Canada: "it can inform public opinion, influence public policy, and guide future jurisprudence. As Indigenous peoples, we can use it in our pursuit for the full recognition, respect, and implementation of our rights at home. Human rights institutions and courts can use the *Declaration* as a standard to measure how Canada behaves toward our peoples, our communities, and our nations."¹¹¹ The UN *Declaration* can be used to promote policy reforms and legislative amendments and to support arguments in litigation and negotiations.

To fully implement the UN *Declaration*, we must also undertake a comprehensive review of all the laws and policies in Canada to see where we are failing to uphold the UN *Declaration*.¹¹² Indigenous organizations have also recommended that to promote implementation, "States, in conjunction with Indigenous peoples, establish national plans of work to implement the *Declaration* with clear timelines and priorities. States should report regularly on the progress and shortcomings in implementing the *Declaration* to their national legislatures and to EMRIP."¹¹³

As described in the preamble and articles 38, 39, and 40 of the UN *Declaration*, States are obligated to cooperate with Indigenous peoples in taking measures to implement and interpret the provisions of the UN *Declaration*, including providing access to assistance for the fulfillment of the rights guaranteed in the UN *Declaration*. Throughout the UN *Declaration*, strong language is used obligating the State to take steps to ensure these rights are upheld. The UN *Declaration* sets out many requirements for States to set up fair conflict resolution procedures and to provide effective remedies for violated rights. These measures must take into consideration international human rights norms and customary laws of Indigenous peoples.

The UN *Declaration* also sets out obligations on the United Nations and its bodies, specialized agencies and States to ensure the respect and application of the UN *Declaration*. Articles 41 and 42 require that agencies of the United Nations and intergovernmental organizations contribute to, and assist in the process of implementing the UN *Declaration* for the full realization of the provisions.

A final component of the UN *Declaration* is how it is to be interpreted. When using the UN *Declaration* it is important to not consider one article in isolation from the others. Rather, the UN *Declaration* should be "read in its entirety or in a wholistic manner and to relate it with existing international law."¹¹⁴ As an international human rights instrument, it is important to interpret the UN *Declaration* with reference to other similar international treaties, declarations, and legal comments. Finally, it must be re-emphasized as set out in the preamble and article 43, the UN *Declaration* contains the minimum standards for the well-being of Indigenous peoples and for promoting harmonious relationships. It is from this starting point that Indigenous peoples and their communities can continue to grow and prosper into the future.

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- 2 Phil Fontaine, "A Living Instrument," in *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope and Action*, Jackie Hartley, Paul Joffe, and Jennifer Preston, eds. (Saskatoon, Purich Publishing Ltd: 2010) 8 at 9.
- 3 Victoria Tauli-Corpuz, "Statement of Victoria Tauli-Corpuz, Chair of the UN Permanent Forum on Indigenous Issues on the Occasion of the Adoption of the UN Declaration on the Rights of Indigenous Peoples" (Delivered to the United Nations General Assembly, New York, 13 September 2007).
- 4 For a more precise and technical definition of international law, see John H. Currie, Craig Forcese, and Valerie Oosterveld, *International Law: Doctrine, Practice, and Theory*, (Toronto: Irwin Law, 2007) at 4-5.
- 5 For example, 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 202. See also General Assembly, Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/65/264 (9 August 2010), at paras. 59, 62-3.
- 6 United Nations Permanent Forum on Indigenous Issues, Frequently Asked Questions on the United Nations Declaration on the Rights of Indigenous Peoples, available at <http://www.un.org/esa/socdev/unpfi/en/declaration.html>.
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- 10 *Baker v Canada* (Minister of Citizenship and Immigration), (1999), 174 DLR (4th) 193 (SCC); *Attorney General for Canada v Attorney General for Ontario* (Labour Conventions), [1937] AC 326 (PC); *Francis v R*, [1956] SCR 618.
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- 12 See *Baker*, supra note 10 at para 70. See also, *Daniels v R*, [1968] SCR 517 at 541; *Schreiber v Canada* (Attorney General), 2002 SCC 62 at para 50; *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at 349 (per Dickson CJC in dissent, though not on this point).
- 13 The Indigenous Rights Committee of the International Law Association argues this requirement is evidenced by "the words used in the first preambular paragraph of the Declaration, according to which, in adopting it, the General Assembly was [g]uided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter." Therefore "this text clearly implies that respect of the [Declaration] represents an essential prerequisite in order for States to comply with some of the obligations provided for by the UN Charter" ILA Report at 6.
- 14 Foreign Affairs and International Trade Canada, Canada's International Human Rights Policy <http://www.international.gc.ca/rights-droits/policy-politique.aspx?view=d>.
- 15 Jackie Hartley, Paul Joffe and Jennifer Preston, "From Development to Implementation: An Ongoing Journey" in *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope and Action*, Jackie Hartley, Paul Joffe, and Jennifer Preston, eds. (Saskatoon: Purich Publishing Ltd, 2010) 12 at 12.
- 16 S. James Anaya, *Indigenous Peoples in International Law*, 2nd edition (New York: Oxford University Press, 2004) at 100. Anaya provides this definition in reference to self-determination, which is recognized to be one of the rights of peoples.
- 17 Victoria Tauli-Corpuz, supra note 3.
- 18 UN General Assembly Resolution 217A (III).
- 19 James (Sa'ke'j) Youngblood Henderson, *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition* (Saskatoon: Purich Publishing Ltd, 2008) at 75.
- 20 Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, UN Doc. A/HRC/12/34 (15 July 2009), para. 41.
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- 22 For example, see Human Rights Committee, Concluding observations of the Human Rights Committee: Canada, UN Doc. CCPR/C/CAN/CO/5 (20 April 2006) at paras. 8 and 9; and Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights: Morocco, UN Doc. E/C.12/MAR/CO/3 (4 September 2006) at para. 35.
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- 24 James Anaya, supra note 16 at 189.
- 25 See article 40. See also *ibid* at 189.
- 26 For a more detailed analysis of this argument, see Paul Joffe supra note 5 at 182-183.
- 27 Politics in Greenland, Greenland Representation to the EU, Brussels <http://eu.nanoq.gl/Emner/About%20Greenland/Politics%20in%20Greenland.aspx>.
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- 31 Article 2, 78 UNTS 277.
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- 33 *Ibid* at 18.
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- 35 *Ibid* at 19.
- 36 *Minority Rights Group International and CEMIRIDE (on behalf of the Endorois Community) v Kenya*, Communication 276/2003.; Human Rights Watch, Kenya: Landmark Ruling on Indigenous Land Rights, 4 February 2010, available at: <http://www.unhcr.org/refworld/docid/4b71215bc.html> [accessed 24 July 2011].
- 37 UNESCO Universal Declaration on Cultural Diversity, article 1.
- 38 Permanent Forum on Indigenous Issues, "Indigenous Languages: Fact Sheet," at 1, available at www.un.org/esa/socdev/unpfi/.../Factsheet_languages_FINAL.pdf.
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- 40 *Ibid* at 1.
- 41 Permanent Forum on Indigenous Issues, "Report of the international expert group meeting on indigenous languages," UN Doc. E/C.19/2008/3, 21 January 2008, at para 28.
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- 53 EMRIP advice no 1, supra note 50 at para 3.
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UN Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly
61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting 13 September 2007

Adopted by General Assembly Resolution 61/295 on 13 September 2007

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights (2) and the International Covenant on Civil and Political Rights, (2) as well as the Vienna Declaration and Programme of Action,⁽³⁾ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁽⁴⁾ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossession of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing

systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and

implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall

take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and

through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

(2) See resolution 2200 A (XXI), annex.

(3) A/CONF.157/24 (Part I), chap. III.

(4) Resolution 217 A (III).

Additional Resources & Glossary

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- Claire Charters & Rodolfo Stavenhagen, eds., *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Copenhagen: International Work Group for Indigenous Affairs, 2009).
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- James (Sa'ke'j) Youngblood Henderson, *Indigenous Diplomacy and the Rights of Peoples: Achieving UN Recognition* (Saskatoon: Purich Publishing Ltd., 2008).
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- Lola Garcia-Alix & Robert K. Hitchcock, "A Report from the Field: The Declaration on the Rights of Indigenous Peoples – Implementation and Implications" (2009) 4 Genocide Studies and Prevention 99.
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- Siegfried Wiessner, "Indigenous Sovereignty: A Reassessment in the Light of the UN Declaration on the Rights of Indigenous Peoples" (2008) 41 Vand J Transnat'l L 1141.

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- UN Permanent Forum on Indigenous Issues
<http://www.un.org/esa/socdev/unpfii/>
- Special Rapporteur on the rights of indigenous peoples
<http://www2.ohchr.org/english/issues/indigenous/rapporteur/>
- Indigenous Bar Association
http://www.indigenousbar.ca/main_e.html
- Canadian Friends Service Committee (Quakers): Aboriginal Affairs - UNDRIP
<http://quakerservice.ca/our-work/indigenous-peoples-rights/un-declaration>
- UN Expert Mechanism on the Rights of Indigenous Peoples
<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>
- Indigenous Peoples' Center for Documentation, Research and Information
<http://www.docip.org/Documentation.7.0.html>
- International Law Association, Rights of Indigenous Peoples Committee, Interim Report for the Hague Conference, (2010)
<http://www.ila-hq.org/en/committees/index.cfm/cid/1024>

GLOSSARY

- Charter of the United Nations** – Established the United Nations, sometimes referred to as the Constitution of the United Nations. It is binding on all States that are members of the UN.
- Convention** – An instrument in international law that is legally binding, sometimes referred to as "covenant" or "treaty."
- Declaration** – An instrument that may be adopted by a diverse range of international bodies, including the General Assembly, UN agencies and international conferences. While not legally binding in the same manner as treaties, in some circumstances declarations have legal effect.
- Expert Mechanism on the Rights of Indigenous Peoples** – An international body of experts that provides advice to the Human Rights Council through conducting studies and research on the rights of Indigenous peoples.
- General Assembly** – The main deliberative organ of the UN and is composed of representatives of all Member States. All States are equal and each State has one vote. The General Assembly provides the opportunity for all States to discuss international issues.
- Human Rights Council** – A UN body of 47 State representatives, whose main purpose is addressing situations of human rights violations and make recommendations on them.
- Indigenous peoples** – An international term, which would encompass the Aboriginal people in Canada, including Indians or First Nations, Inuit and Métis. Note, the UN *Declaration* does not set out a specific definition of Indigenous peoples.
- Instrument** – An international document, which could include treaties and declarations, that may or may not be binding.
- Permanent Forum on Indigenous Issues** – sometimes referred to as UN Permanent Forum (PFII) – A UN body of 16 experts which provides advice to the Economic and Social Council on Indigenous peoples in relation to six main areas: economic and social development, culture, the environment, education, health and human rights.
- Preamble** – An introduction that states the purpose and intent of the instrument and can be used to interpret the rights set out in the instrument.
- Special Rapporteur** – An expert appointed to conduct research, investigate, monitor and make recommendations by writing reports to a specific international body on a specific issue or country. Each Special Rapporteur is given a specific mandate to guide their work.
- State** – international term for "country" – sometimes referred to as a "nation-State."
- Treaty** – these can be between States or between Indigenous peoples and States, also see Convention above.

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