

RESTORING INDIGENOUS RIGHTS

How Implementing the United Nations Declaration on the Rights of Indigenous Peoples Can Advance Climate Justice in Canada



By Keira Kang

With contributions from Dr. Kenneth Atsenhainton Deer, Ashley Bach-Wesley, Ben Powless, Dara Wawatie-Chabot, and Graeme Reed

AUGUST 2020

CITIZENS FOR
PUBLIC JUSTICE 

Acknowledgements

This paper was made possible thanks to the generous input, support, copyediting, and feedback of both Indigenous and non-Indigenous individuals from diverse organizations. I sincerely hope that this paper will live up to the incredible contributions that I received and that it can contribute to CPI's work towards Indigenous-centered climate justice advocacy.

I would first like to acknowledge my reverence and gratitude to Dr. Kenneth Atsenhainton Deer for his wisdom on climate justice and the UN Declaration on the Rights of Indigenous Peoples. As a former participant of the UN Working Group on Indigenous Populations, which drafted the original text of the UN Declaration, his expert knowledge and passion were instrumental in guiding my examination of the Declaration.

I want to thank Ashley Bach-Wesley for shedding light onto the complex environmental impacts of Canadian federal policies on her First Nation community, Mishkeegogamang. I am grateful to have learned from her vulnerability, passion, and vision for holistic development across Indigenous communities in Canada.

I would like to extend my warm thanks to Ben Powless for providing his knowledgeable responses and allowing CPI to gain valuable insight into what Indigenous-led climate justice advocacy can look like in practice. His advice on Canada's need for ground-up consultation and increasing power to Indigenous communities has allowed me to craft my paper in support of Free, Prior, and Informed Consent as outlined in the UN Declaration.

I would like to express my heartfelt gratitude to Dara Wawatie-Chabot for their willingness to share their personal experiences of environmental impacts of Canadian policies on their Algonquin-Anishinaabe territory. By emphasizing Canada's need to focus on marginalized populations, Dara's recommendations were influential in guiding the intersectional approach of my paper.

I am thankful to Graeme Reed for his invaluable stories and insights about the resilience of Indigenous Peoples to the impacts of climate change. His perspective proved how much an empowering rhetoric can further advance Indigenous-centered climate justice in Canada.

I want to acknowledge the support of CPI's senior policy analyst and my supervisor, Karri Munn-Venn, for her humble guidance throughout this project. Thanks to her help, I was able to successfully acquire skills in crafting this position paper, seeking Indigenous guidance and developing creative independence, which will all be of great use for my future endeavours in the field of public justice.

Thank you to CPJ staff and board members Brad Wassink, Harold Roscher, Natalie Appleyard, and Stephen Kaduuli for your commitment to ensuring that my project was completed to the highest standard by taking your time to edit my paper. Thank you, Brad, for your design work and elaborating on the details of my goals with the best steps to proceed, which has made this project an unforgettable experience.

–Keira Kang

TABLE OF CONTENTS

Introduction	Page 4
Part 1: Key Terminology	Page 6
Part 2: Legal Frameworks	Page 12
2.1: The Indian Act	Page 12
2.2: Section 35 of the Constitution Act of 1982	Page 14
2.3: The United Nations Declaration on the Rights of Indigenous Peoples	Page 15
Part 3: Indigenous Perspectives and the UN Declaration	Page 18
3.1: Dr. Kenneth Atsenhainton Deer	Page 19
3.2: Ashley Bach-Wesley	Page 25
3.3: Ben Powless	Page 30
3.4: Dara Wawatie-Chabot	Page 34
3.5: Graeme Reed	Page 39
Conclusion	Page 44
Endnotes	Page 46

INTRODUCTION

Indigenous rights, environmental protection, and human rights are inextricably linked. While various Indigenous Peoples in Canada share many common values, perspectives, and experiences, there is also vast diversity. This is displayed by their distinct heritages, cultural practices, dialects, and spiritual teachings. One of the most important shared values among Indigenous Peoples, however, is that of relationship-building and the interwoven nature of humans with the natural environment. According to the Anishinaabe story of Creation, all humans and living things have maintained a holistic relationship with their lands and territories from the beginning.¹ Many Indigenous Peoples view nature with deep respect. It is of paramount importance to many Indigenous groups, therefore, to foster, appreciate, and preserve relationships with inanimate and animate aspects of Creation.²

Indigenous homelands, now located in Canada, face growing threats from federal, provincial, and territorial government projects as well as corporate interests that continue to push for urbanization and resource extraction. This has led to environmental degradation, land appropriation, and disregard of Indigenous rights to self-determination and traditional stewardship of lands. The full implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) in Canada is absolutely vital in order to establish comprehensive, overarching moral and legal guidelines. The UN Declaration not only respects Indigenous Peoples in their desire and right to manage their natural environment for future generations, but also their full agency in shaping their own socio-economic and political development.

This paper aims to deepen CPJ's understanding of what it means to advance towards trust-based allyship with Indigenous Peoples in the context of climate justice in Canada. While we aim to include diverse Indigenous voices in this paper, we acknowledge that CPJ is not in a position to determine policy guidelines that claim to include the vast perspectives of all Indigenous Peoples. This paper is one step of many that we will take in our journey to ensure that Indigenous knowledge guides and informs the climate justice work of CPJ. We hope it can serve as a starting point in seeking deeper conversations with environmental activists, Indigenous knowledge keepers, Elders, Chiefs, and other individuals of Indigenous heritage across Canada.

Part 1 of this paper provides some terminology pertaining to Indigenous Peoples in Canada. Throughout colonization, settlers categorized Indigenous Peoples in paternalistic and oppressive ways for their own ease of governing. Recognizing these struggles and honouring the immense breadth of Indigenous knowledge and culture that make up the character of this country, this section will seek to help us unlearn, redefine, and reorient some of the major Indigenous-related terms that continue to harm Indigenous People today due to mainstream misinterpretation and ignorance.

Part 2 examines the legal frameworks that continue to affect Indigenous lands, air, cultures, heritage, resources, and livelihoods today, namely The Indian Act and Section 35 of the Constitution Act of 1982. By gaining a firm grasp on the constitutional and socio-political relationship that Indigenous Peoples have historically held and presently hold with the Canadian government, this section explores the causes of the ongoing harm on Indigenous communities, their lands, cultures, and resources. By identifying the limitations of these legal structures, part 2 sets out the need to dismantle colonial legacies at work in Canada: systemic racism, climate-related and socio-economic inequities, and uneven dynamics of privilege that continue to harm Indigenous Peoples today. This section points out the dire need for Canadian governments and civil society to confront these laws, uphold Indigenous sovereignty, and restore Indigenous decision-making powers. Part 2 also provides a general backgrounder of the UN Declaration and Canada's need to ensure its implementation and restore Indigenous-led climate justice.

Part 3 presents the perspectives of five Indigenous people—activists, professionals, and experts—from climate justice groups across Canada. With permission, this section explores their personal stories and experiences, including how their communities have been impacted by both Canadian and international legal frameworks and environmental devastation. Based on their recommendations and ways of knowing, part 3 points to key articles in the UN Declaration that speak directly to their experiences and that urgently need to be implemented in Canada.



PART 1: KEY TERMINOLOGY

Colonial institutions and legal frameworks have defined many terms and ideas pertaining to Indigenous Peoples in Canada. As an organization that aspires to practice decolonization in our climate justice efforts, CPJ believes in establishing meaningful Indigenous-related terminology to unlearn our Eurocentric ways of thinking. While the conscious use of language cannot redress the oppressive structures of colonialism that persist in Canada, we hope to demonstrate our commitment to reconciliation through the proper usage of Indigenous-related terms.

Allyship

Allyship means that a person or a group in a position of privilege and power makes a lifelong commitment to stand in solidarity and advocate for the interests of a traditionally marginalized group. This is done by putting in a continued effort to confront unequal power dynamics in both personal and public spheres. It means recognizing that one's race, gender, religion, ability, sexual orientation, socio-economic status, and/or other identities have allowed them to benefit above a non-dominant group in society and then leveraging these privileges in order to uplift the oppressed group.

Indigenous allyship is a decolonizing effort that occurs between settler communities and Indigenous Peoples on their unceded lands. Allyship goes beyond endorsing and displaying support on the surface level. It is an intentional, consistent, and meaningful relationship-building process built on accountability, reconciliation, and listening.

The first step is becoming aware of, and unlearning, our unconscious biases rooted in systemic racism, while also acknowledging the deep-seated oppression of Indigenous Peoples in Canada.³ It entails understanding the role, both institutionally and socially, that colonization plays in normalizing racism against Indigenous Peoples.

Allyship seeks to examine the contemporary realities and narratives that colonization has created and continues to perpetuate regarding Indigenous Peoples. At the same time, we must reflect on the role that non-Indigenous people have within a collective environment and ensure that their voices and activism are not silencing Indigenous Peoples.

The next step is to go beyond education and self-reflection by building authentic relationships and disrupting the oppressive spaces that continue to harm Indigenous communities. When it comes to writing about Indigenous Peoples, it is important that Indigenous Peoples are placed at the centre of the publication, without taking up their space to speak on their behalf. Due to the wide-ranging knowledge systems, cultural practices, rituals, and perspectives that Indigenous Peoples possess, building relationships with different Indigenous contributors, consultants, Elders, and community members is essential as an ally. Not only that, but allyship is being

aware that this collaboration will take time and is not a uniform task to be checked off from a list, but that it is a continual, on-going process.⁴

Finally, allyship is never self-awarded. In other words, a non-Indigenous person cannot simply identify themselves as an ally to rid themselves of their guilt; their efforts in anti-oppression must be acknowledged by those with whom they seek to ally themselves.⁵

Aboriginal

Aboriginal means that one has originated from a particular place prior to colonization and imperialism. In the Canadian legal context, this term was defined in Section 35 (2) of the Constitution Act in 1982 to refer to the three main Indigenous groups in Canada: First Nations, Métis, and Inuit.⁶ Despite its seemingly all-encompassing nature, this term was rejected by 42 communities of the Anishinabek Nation in Ontario in 2008 due to its assimilative and colonial nature.⁷ Grouping the First Nations, Métis, and Inuit as Aboriginals risks the complete erasure of distinctive identities by reducing Indigenous Peoples' identities into a single homogenous entity. It is important to always be specific when referring to an Indigenous group, and get clarity on how they self-identity. The [Congress of Aboriginal Peoples](#) is an excellent resource that includes information about Indigenous history and identification.

Indigenous Peoples

Originated from the Latin word *indigene*, Indigenous can be translated into English as “sprung from the land.”⁸ Similar to the term *Aboriginal*, *Indigenous Peoples* refer to those who have lived in an area before colonization and forced displacement by settler groups.⁹ In Canada, this is a collective term that describes the original inhabitants of Canada and their descendants. Indigenous Peoples in Canada include: First Nations, Métis, and Inuit.

The pluralization of *Peoples* is used to recognize that there is more than one group that comprises the Indigenous population in Canada and that Indigenous Peoples are culturally, linguistically, and socio-politically unique and diverse.¹⁰ Capitalization is employed as a sign of respect. Not only that, but the indication of Peoples affirms certain rights under several International Covenants, including the right to self-determination.¹¹ When speaking to a single Indigenous group, such as the Algonquin or the Haida, it is best to use the specific name of their community.

Unlike the term *Aboriginal*, this definition has been widely accepted among many Indigenous communities, as it not only seeks to respect Indigenous Peoples' authentic possession and guardianship to their lands but also prioritizes socio-cultural acknowledgement and sovereignty of Oral Traditions and Traditional Knowledge systems.¹²

First Nations

First Nations are one of the three distinguished groups of Indigenous Peoples in Canada, recognized in the Constitution Act of 1982.¹³ First Nations reside in diverse regions across Canada, mostly south of the Arctic Circle. Over 50 percent of the 634 registered First Nations communities inhabit the colonial provinces of Ontario and British Columbia.¹⁴ The collective noun of First Nations first came to use in the 1970s as a replacement for “Indian” within the Indian Act of 1876, which is a term now deemed as colloquially inappropriate despite its continued legal usage to this day.

While First Nations is not legally defined, this term is attributed to the ethnicity of the First Nations people overall. The singular term, First Nation, refers to a specific Band, a reserve-based group, or a tribal unit in Canada. There are nearly one million First Nations people currently residing in Canada who speak over 50 different languages.¹⁵ To learn more about the rich and diverse cultural heritage of First Nations, refer to the [Assembly of First Nations](#).

Métis

There are two distinct definitions of this term, depending on whether or not it is capitalized. In lower-case, *métis* refers to an Indigenous person who comes from a mixed European and Indigenous ancestry in Canada. When capitalized, *Métis* identifies a specific community called the Métis Nation, whose homeland can be traced back to the Red River Valley, in what is now formally known as Manitoba and the prairies of Canada. While there is no legal definition specifically dedicated to this group, the Métis are included as one of the three Indigenous Peoples under Section 35 of the Constitution Act of 1982. It is very important to acknowledge the differences of the two terms, since not all Indigenous individuals of mixed heritage self-identify as Métis, and Métis embody their own distinctive socio-cultural roots. To learn more about Métis governance and their rich historical heritage, refer to the [Métis National Council](#).

Inuit

Inuit is an Inuktitut term which can be translated into English as “people.” The original homeland of Inuit is located in the Arctic and the Sub-Arctic, including the Inuvialuit Settlement Region in the Northwest Territories, Nunavut, Nunavik in northern Québec, and Nunatsiavut in Labrador.¹⁶ As a group of Indigenous Peoples in Canada acknowledged in Section 35 of the Constitution Act of 1982, Inuit were referred to as “Eskimos” or “Esquimaux” throughout colonization, which is considered by some Indigenous organizations and individuals to be derogatory and disrespectful. The singular form for Inuit is *Inuk*, referring to two individuals is *Inuuk*, and three or more individuals are called *Inuit*. Due to the literal translation of Inuit meaning people, it is not appropriate to say “Inuit people,” as this would mean “people people.” [Inuit Tapiriit Kanatami](#) is the national representational organization for Inuit in Canada.



Inuit should be distinguished from the Innu Nation, a First Nations community predominantly residing in the northeastern portion of Québec and eastern Newfoundland and Labrador. For more information on the Innu Nation, see the [Innu Nation](#).

Turtle Island

Turtle Island is the home of Indigenous Peoples in Canada. It is the original name for the continent of North America established and used by many Indigenous Peoples, from the Iroquois and Anishinaabeg to other Northeastern Indigenous nations. For some Indigenous communities, Turtle Island is not limited to a continent but refers to the entire Earth. Introduced in the Haudenosaunee teachings, the Turtle Island story shares that a Sky Woman fell onto Earth through a hole and was caught by the wings of a goose that protected her. It is widely believed that sea animals dug into the ocean and placed mud on the back of the turtle to provide the Sky Woman with a firm foundation of land, which allowed her to survive and thrive on Earth.¹⁷ This term gained great popularity in the 1970s by many First Nations activists as a symbol of decolonization, particularly to dismantle the paternalistic hierarchy of colonial governments and prove that Indigenous stories can center around female leaders.

Traditional Knowledge

The transmission of Traditional Indigenous Knowledge can be both formal and casual, commonly communicated among close-knit societies and relatives. This form of knowledge is often shared within communal gatherings, ceremonial events, Oral Traditions, and other interactions. It can encompass oral stories that recite anthropological and ecological records, ontological philosophies and methods for calculating time, agricultural techniques, perceptions of the natural environment, and production of medicinal treatments.¹⁸ Many Traditional Knowledge systems are naturally passed down and intergenerationally experienced by Indigenous community members through everyday activities. However, specific types of information are safeguarded and disseminated by particular Indigenous knowledge keepers. When it comes to ecological wisdom, Elders, knowledge keepers, and community leaders generally possess specific Indigenous-guided approaches for addressing climate change, the loss of biodiversity, and other environmental degradation due to resource extraction, unauthorized development, and industrialization. To obtain more information on the various facets of Traditional Knowledge, refer to the [Aboriginal Traditional Knowledge Sub-Committee of Committee on the Status of Endangered Wildlife in Canada](#).

Oral Traditions

Oral Traditions are one of the most common methods for Traditional Indigenous Knowledge to be transmitted, retained, and strengthened. Among Indigenous groups, Oral Traditions act as valuable points of reference and remembrance. According to Hereditary Chief and Keptiniⁱ of the Mi'kmaq Grand Council, Stephen Augustine, Oral Traditions contribute tremendously to Indigenous historical records due to their collective nature:¹⁹

“When each Elder spoke, they were conscious that other Elders would serve as ‘peer reviewer’ [and so] they did not delve into subject matter that would be questionable... These teachings were shared in the circle and these constituted a reconnaissance of collective memory and knowledge. In the end the Elders left with a knowledge that was built by collectivity.”²⁰

Eurocentric culture may view Oral Traditions as unreliable due to Western academia’s heavy reliance on written records. However, it is crucial to note that Oral Traditions are sophisticated knowledge structures that are frequently recapped and customarily confirmed by knowledgeable Elders. An important principle, therefore, in doing consultation or research with Indigenous Peoples, is to always seek to represent a continuum of Indigenous stories that have been orally told on Indige-

i “Keptins” refer to captains who lead the council of the Mi'kmaq political body.

nous lands for millennia as a part of their Traditions. One of the ways to incorporate Indigenous knowledge is by valuing the way that Indigenous Peoples prefer to share their knowledge. This means willingness and openness to learn from oral expressions of storytelling and sharing of intergenerational experiences rather than a formally written essay. In addition, by recognizing that knowledge exists for Indigenous Peoples based on their association to a specific land, it may also be helpful to attend community events within a local environment, upon invitation of Indigenous leaders or Elders, so that the integration of Indigenous knowledge is not linear but comes from experiential relationship-building.²¹

Two-Spirit

Originated from the Anishiaabe term *niizh manidoowag*, meaning “two spirits,” *two-spirit* refers to a person whose body simultaneously houses a masculine spirit and a feminine spirit. It is an umbrella term that can include gay, lesbian, bisexual, transgender, and non-conforming gender and sexual identities of Indigenous Peoples in the context of their cultural identity.²² It is represented by “2S” in the 2SLGBTQQIA initialization.²³ This term was initially adopted by Albert McLeod in 1990 at the Third Annual Inter-tribal Native American, First Nations, Gay and Lesbian American Conference in Winnipeg, Manitoba. Two-spirit was not only coined to identify Indigenous Peoples who possess both feminine and masculine spirits but also to deliberately resist non-Indigenous LGBTQQIA terms and colonial constructions of gender identities.

While this term actively seeks to exercise Indigenous Peoples’ sovereign right to define their own sexual identities, it is not a term that is unanimously accepted by all Indigenous groups. For instance, when the term two-spirit is directly translated into the Athapaskan language of the Navajo or Apache Indigenous group, it can also mean that an individual is both living and dead, which is not fitting for the characteristic they wish to identify.²⁴ There are also many Indigenous communities who prefer to be identified under the conventional LGBTQQIA terms, which is why an ally should never automatically assume that a non-binary Indigenous person wishes to identify as two-spirited. For more information and resources, refer to the [2-Spirited People of the 1st Nations](#).

PART 2: LEGAL FRAMEWORKS

This section examines both binding and non-binding legal structures in Canada that continue to impact Indigenous lands, air, water, cultures, Traditions, and livelihoods. First, we look at The Indian Act and Section 35 of the Constitution Act of 1982. These “protective” legal structures have caused Indigenous Peoples to disproportionately bear the environmental, cultural, and socio-economic consequences of climate change.

Indigenous Peoples play an invaluable role in shaping the socio-cultural makeup of their environments and continue to fight for their sovereign land rights that have been passed down for generations. This section argues that a lack of concrete measures in Canada has resulted in their human rights violations and environmental disenfranchisement. Without proper implementation of the United Nations Declaration on the Rights of Indigenous Peoples, we will continue to overlook their legal protection.

2.1: The Indian Act

The Indian Act is a federal law passed by the Canadian government in 1876. Most of its initial conditions are upheld to this day. Utilizing race-based criteria to delineate who is and who is not considered an “Indian,” the Indian Act is a piece of legislation that enforced assimilation and legitimized control over First Nations people in Canada through systems such as the residential school system.²⁵ As the Indian Act only applies to *status Indians*, it does not apply to Métis and Inuit despite their original occupancy in Canada. This legislation has had a lasting effect on First Nations’ identities, creating painful divisions among families and impairing the ability of many First Nations to access their rights. In 1867, the British North America Act required that all matters pertaining to “Indians” operate under the federal jurisdiction, meaning that the federal government was in charge of administering services that the rest of Canada would typically obtain from provincial or municipal governments.²⁶

According to the Indian Act, status Indians are entitled to specific “rights and benefits” that non-status Indians do not have, such as the right to be exempt from paying federal or provincial taxes on certain goods and properties. Status Indians are eligible to receive financial support for attending post-secondary education, with funding provided by Indigenous and Northern Affairs Canada. Additionally, the federal government also provides on-reserve housing assistance to status Indians.

However, there are many loopholes to these benefits. For example, status Indians lose their eligibility for tax exemptions if they work and live off-reserve. This creates a barrier since, on average, status Indians only earn approximately \$19,000 a year²⁷ and only 0.2 per cent of First Nations’ traditional lands are on the reserves.²⁸ This pushes status Indians further into the margins of poverty and exclusion by implicitly forcing their residency on reserves.

According to Bob Joseph, a member of the Gwawaenuk Nation, while many non-Indigenous Canadians believe that living on the reserves as a First Nations person equates to free education and housing, the Indian Act in reality is a “post-confederation assimilation tool.”²⁹ First Nations reserves are legally owned by the federal government, which requires First Nations people to obtain approval from “Indian Agents” in order to cultivate and maintain their own lands.

Government financing for education presents itself with a set of hidden problems. Not every eligible student is able to receive financial support due to funding limitations. The government often only provides partial assistance, restricting opportunities for most applicants who require substantial financial aid.³⁰ With regards to housing, despite the government claiming that there is funding to improve housing conditions, major problems were reported in on-reserve housing. Some of these include deteriorating infrastructure, overcrowded housing conditions, and mold contamination, resulting in increased incidences of pneumonia, asthma, bronchitis, and other illnesses. Over 43 per cent of on-reserve houses are reported to be in need of significant repairs. Many households do not have access to clean running water and sanitation.³¹ As a result, many First Nations people (both status and non-status Indians) claim that the Indian Act is not only divisive and racist, but also fails to fully reflect any of the lived struggles faced by First Nations.

The Indian Act is commonly connected with cases of environmental racism. In 2005, Kashechewan First Nation in northern Ontario was exposed to toxic water when E. coli bacteria was found in their water system.³² The federal government is responsible for ensuring that First Nations people living on reserves have access to safe, clean, and secure drinking water. Yet, despite life-threatening risks associated with the toxic water, officials took over two weeks to evacuate the First Nations members, endangering many lives. By failing to devote the necessary attention to the urgent needs of First Nations people, the federal government is perpetuating institutionalized violence that exacerbates the health crisis and socio-economic marginalization of First Nations. By extension, this increased vulnerability also means that First Nations have a higher likelihood of exposure to the life-threatening impacts of climate



change. This is due to the fact that one's sensitivity to environmental damage often fluctuates due to economic, political, and social factors. When a community lacks adequate access to basic resources, this hampers their overall ability to design, implement and execute effective disaster risk reduction and climate change adaptation interventions.³³ As a result, this creates a negative feedback loop as climate change then continues to diminish the quality of invaluable natural resources, such as water and air. This not only forces First Nations peoples out of their homes and disrupts their lives, but by interrupting their access to employment it also pushes them further into poverty—to say nothing of the serious risks to their health and food security.

Despite its problems, the Indian Act remains a meaningful piece of legislation for some First Nations. The Act recognizes the unique relationship that First Nations have with their traditional lands and differentiates First Nations from other people in Canada.³⁴ Many First Nations people have also expressed their concerns that if the Indian Act is abolished without protective legal measures in place, their reserves may be classified under provincial jurisdiction, risking further colonial threats of resource extraction and land expropriation.³⁵

2.2: Section 35 of the Constitution Act of 1982

Indigenous treaty rights are recognized in Section 35 of the Canadian Constitution Act of 1982. It states:

(1) The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed.

(2) In this Act, “Aboriginal Peoples of Canada” includes the Indian, Inuit, and Métis Peoples of Canada.

(3) For greater certainty, in subsection (1), “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.³⁶

Section 35 recognizes the “existing Aboriginal or treaty rights” which include the right of Indigenous Peoples in Canada to decide how their traditional lands are inhabited and to reap any profits they make from the usage of their lands. On the surface level, Section 35 acts as the constitutional foundation for Indigenous Peoples in Canada and a source of Indigenous legal rights. From treaty rights to affirmation of Indigenous possession over traditional lands, this framework appears to safeguard a wide range of Indigenous rights, particularly pertaining to land rights, across Canada.

However, while the overall phrasing of this law appears inclusive and all-encompassing, the real-life implications often fail to protect the inherent rights and dignity of Indigenous Peoples in Canada. According to Dr. David Milward, a Cree member of the Beardy's and Okemasis First Nation in Saskatchewan, this is due to the misleading usage of the words “recognizing” and “affirming” in Section 35, which do not render Indigenous land rights to be *absolute*.³⁷ As a result, despite the basis of Indigenous rights and sovereignty clearly articulated in Section 35, there remains numerous reports of Indigenous Peoples in Canada facing arrests and detainment for exercising their rights, such as fishing and engaging in other cultural practices:

“There are far more Indigenous people who personally know brothers, sisters, aunts, dads, and uncles who have been stopped, questioned, charged, and convicted for exercising their Aboriginal Rights, than who know of the existence or content of s.35. Section 35 to many Indigenous Peoples has remained a powerful yet invisible force.”³⁸

The Supreme Court of Canada reaffirmed in 2020 that the federal government is only permitted to intervene in Indigenous lands upon obtaining consent of the “Aboriginal group.” As a result, Indigenous communities are required to prove their “Aboriginal title” by proving their land ownership and continued occupation of traditional lands, which all necessitate disproportionately long and costly litigation processes.³⁹ Clearly, Section 35 does not live up to what it appears to be.

2.3: The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples is a non-binding international framework which lays out the basic human rights that constitute “the minimum standards for the survival, dignity and well-being of Indigenous peoples in the world.”⁴⁰ Following a 1982 UN report claiming that Indigenous Peoples around the world were facing serious human rights violations, the Working Group on Indigenous Populations began to draft a declaration dedicated to Indigenous human rights in 1985. After eight years of consultation with Indigenous organizations, a final declaration was submitted in 1993 to the Sub-commission on the Promotion and Protection of Human Rights to protect and secure the human rights and freedoms of Indigenous Peoples.⁴¹

The years between 1993 and 2006 involved an arduous process with many hesitant responses by Member States of the UN. Many leaders feared that granting Indigenous rights to self-determination would go against the interest of the state. Consequently, in order to address these concerns, another working group was formed in 1995 to elaborate on the pre-existing draft of the declaration. In the span of approximately ten years, the UN Declaration underwent several different drafts.

In 2006, the UN Human Rights Council passed the final UN Declaration on the Rights of Indigenous Peoples.⁴² It offers a set of guiding principles to provide national governments, including Canada, a genuine opportunity to prioritize Indigenous teachings and Traditional Knowledge and to support a reconciliation framework to uphold Indigenous land rights.

While a lot of the components of this declaration are specific to Indigenous rights, many can also be found in other international documents, such as the 1945 Charter of the United Nations and the 1948 United Nations Declaration of Human Rights. Though the UN Declaration of Human Rights already upheld the fundamental human rights of Indigenous Peoples, the perpetual dismissal of this framework led the UN to craft a new document specifically dedicated to Indigenous sovereignty and dignity.

In 2007, Canada was one of the four UN Member States that voted against the UN Declaration at the General Assembly. Three years later, Canada published a “statement of support” to assert that while they endorsed the UN Declaration, they did not wish for this framework to alter Canadian law pertaining to the rights of Indigenous Peoples in Canada. In 2015, Prime Minister Justin Trudeau declared the implementation of the UN Declaration as one of the priorities for his newly-elected government. In 2016, Carolyn Bennett, Minister of Indigenous and Northern Affairs announced that Canada “fully supports” all articles of the UN Declaration “without reservation.” However, to this day, Canada has not specifically formulated any binding policies pertaining to Indigenous rights and the UN Declaration.

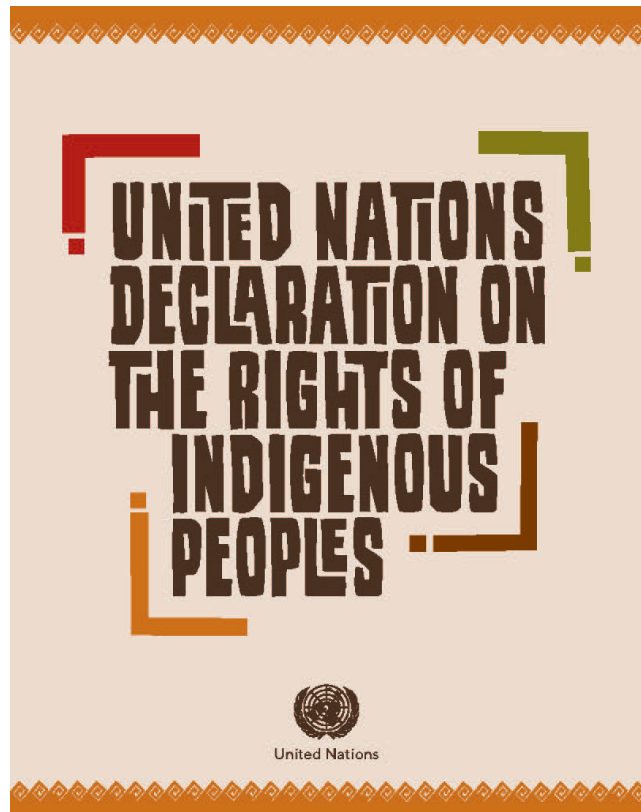
The one exception is Bill-41, in the province of British Columbia, which adopted the UN Declaration into law in 2019. This legislation is designed to ensure that all B.C. laws are consistent with the 46 articles of the UN Declaration. The process of implementation is expected to take an excessively long period, which allows harm against Indigenous Peoples and their communities to continue in the meantime.

Since the UN Declaration is not a legally enforceable federal structure in Canada, it, like the Indian Act and Constitution Act, fails to ensure the sovereign rights of Indigenous Peoples in Canada. Still, the UN Declaration bears great significance because it stands as the only human rights instrument created with the participation of the rights-holders themselves, that is, Indigenous Peoples from around the world.⁴³ Canada therefore must legally entrench the UN Declaration and ensure that it is monitored, enforced, and legitimized within all jurisdictions throughout Canada. This would ensure that the Canadian government obtains full consultation, consent, and approval by Indigenous Peoples for any projects on their lands and affirms Indigenous Peoples’ sovereign right to protect their lands, language, heritage, kinship, cultural practices, institutions, and ways of knowing.

Many Indigenous communities continue to be burdened by different types of environmental racism on their lands and waters, including boil water advisories, resource extraction, deforestation, land expropriation, and other agricultural violations.⁴⁴ Colonialism brought about destructive injustices on their sacred natural

resources. These environmental injustices demonstrate that basic safety for Indigenous Peoples continues to be dismissed and must be addressed through the implementation of the UN Declaration. In rectifying the human rights violations against Indigenous Peoples and prioritizing their health, sovereignty, history, and Traditions, the UN Declaration concretely acknowledges that climate injustices disproportionately harm Indigenous communities. Once these ethical standards are implemented into customary law, we can begin to redress the burden that Indigenous communities face.

The preamble to the UN Declaration displays the potential it has to address the current divergence between Canadian policies and climate justice for Indigenous Peoples in Canada. It reads, in part:



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 that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.⁴⁵

By implementing the UN Declaration, Canada can move towards fulfillment of its commitments to reconciliation and initiate positive systemic changes to address the environmental and human rights violations faced by Indigenous Peoples throughout Canada.

PART 3: INDIGENOUS PERSPECTIVES AND THE UN DECLARATION

The UN Declaration honours Indigenous traditional practices by recognizing that it contributes to “sustainable and equitable development and proper management of the environment.” It also places significant emphasis on Indigenous land rights and cultural ownership. Articles 10, 11.1, and 31.1 identify these rights as follows:

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 (FPIC) 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 practice 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.

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.⁴⁶

What does this mean for Indigenous Peoples in Canada? In this section, five Indigenous activists shed light on this question, illustrating their holistic view of climate justice and highlighting in particular environmental violations faced by many Indigenous Peoples in Canada. The written responses of the interviewees are documented in their own words, as indicated by the green text.

To inform this analysis, CPJ designed an online questionnaire to gather input from individuals of Indigenous descent working in climate or social justice advocacy. We

invited them to share, based on both their professional and/or personal experiences, the climate-related impacts of Canadian federal legislation on Indigenous communities and their vision for Indigenous-led climate justice. We conducted phone interviews for some individuals, to allow them to better share their personal stories and experiences.

Many of the environmental violations Indigenous Peoples face are due to a failure to uphold the rights named by the UN Declaration. Following each activist's perspective, we breakdown the specific UN Declaration articles pertaining to the violations they shared and explore the need to fully implement the UN Declaration in Canada.

3.1: Dr. Kenneth Atsenhainton Deer

Following Indigenous footsteps in fulfilling humanity's lifelong responsibility to keep Creation in balance

With over 30 years of experience in defending and promoting Indigenous rights, **Dr. Kenneth Atsenhainton Deer** currently serves as the Secretary of the Mohawk Nation at Kahnawake and a Member of the Haudenosaunee External Relations Committee. As a participant of the UN Working Group on Indigenous Populations, Dr. Deer contributed to the debate on rights in the UN Declaration and organized Indigenous Peoples Preparatory Meetings for Indigenous representatives. He was appointed to the Board of Trustees of the UN Voluntary Fund for Indigenous Peoples by Secretary General Ban Ki-Moon and served from 2008 to 2014. He continues to advocate passionately for the collective rights of Indigenous Peoples by serving as a Chief Executive Officer of Indigenous World Association, an NGO that holds consultative status with the UN and has participated in sessions of Expert Mechanisms on the Rights of Indigenous Peoples. In 2015, Dr. Deer received an Honorary Doctor of Laws from Concordia University.



Climate is fundamentally the environment of Mother Earth. How Mother Earth functions and nourishes us is the principle relationship that we have with her. Another term that we use instead of Mother Earth is Creation. We are all part of Creation. The plants and animals all play a part in Creation. They have a role to play in the harmony of Creation. We, as people, are also part of Creation and we have a role to play in Creation. We have a lifelong quest to find what our role is in Creation and to fulfil that role to keep the harmony that keeps all of Creation in balance.

In our Traditions, we have invocations before our meetings or every morning called “the Words that Become Before All Others.” It is also called the Opening Thanksgiving. In those words, we acknowledge all of Creation like the earth and rocks, the plants and medicines, the trees, the small animals, the larger four legged animals, the birds and the fish, and other creatures in the waters. We acknowledge the four winds that bring the Thunderers, the rain, and lightning and move the clouds so we have sunshine. And they acknowledge the stars at night and the Grandmother Moon. And finally the Sun, for without it there would be no life. And then we say when we make decisions that we take all of Creation into account so that our decisions do not negatively impact Creation which is what sustains us. So when we talk about climate justice, we mean justice, fairness, and respect for all of Creation.

It is the lack of respect for Creation that has resulted in an imbalance in the environment which is causing the ice to melt, the seas to rise, the more violent storms, plants and animals to become extinct, the air and waters to be polluted. Human beings have caused this to happen. Not the plants and animals. It has to be human beings that repair Mother Earth so it can continue to sustain all of life. That to me is climate justice.

The root of the dispossession and disempowerment of Indigenous Peoples in Canada and elsewhere is the Doctrine of Discovery. This Doctrine is based on the Papal Bulls which states that any European explorer can claim any land they discover for their King or Queen if the inhabitants of that land were not Christian. Hence, when explorers found no Christians in the Americas, they could claim the land for Spain, Portugal, France, or England. That is why all land in Canada is called Crown Land. Not called the land of the Indigenous Peoples who were there already.

This Doctrine resulted in the religious and racial superiority of Europeans over the Indigenous Peoples in the Americas. This is the fundamental foundation of white supremacy and basis for the colonization of Indigenous Peoples in Canada. Included in that colonization was patriarchy which was the domination of males over females in European society. This was contrary to the matrilineal customs of many Indigenous Peoples in particular the Haudenosaunee which is also called the Iroquois Confederacy or the Six Nations Confederacy, made up of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations. This patriarchy removed the voices of women in decision making. And it was Indigenous women who took care of the land and the gardens which sustained our people. That disempowerment resulted in the lack of respect for the land and its eventual degradation through thoughtless development.

Fundamentally, the land has to be returned to the true owners. It means that the underlying title of the land belongs to the Indigenous Peoples of that area and there must be a partnership between the settler state and Indigenous Peoples in the development of those lands. We can't turn back the clock,

but we can make a better future. One that is just for everyone. The recent Memorandum of Understanding (MOU) with the Wet'suwet'en Chiefs might be a small step in that direction.ⁱⁱ It recognizes the original owners of the land and their political structure. It also means a fair sharing of the economy and wealth that is generated on those lands. That sharing would eliminate the 'welfare' attitude that Canadians have toward funding that goes to Indigenous Peoples.⁴⁷

All the rights in the UN Declaration are intertwined in one way or another. When I first went to Geneva in 1987 to attend the UN Working Group on Indigenous Populations when they were writing the first draft of the Declaration, I was struck by the fact that some states and human rights experts were against Indigenous Peoples being called Peoples. They called us communities, groups, tribes, populations, etc, but not Peoples. Because Peoples, under international law, have a right to self-determination. And they were against Indigenous Peoples having self-determination by virtue of which they could freely determine their political status and freely pursue their economic, social, and cultural development.

So, the first three articles of the Declaration are the most important. They state, without reservation, that Indigenous Peoples are Peoples and equal to all other Peoples and are subjects of and have the protections of international law. All the rights in the Declaration flow from those three articles.

The rest of the Declaration articulates specific rights and how they should be applied to Indigenous Peoples. So first, Canada has to recognize the right to self-determination of Indigenous Peoples in Canada. From there, then we can have a relationship of respect and equality. As Article 5 states, Indigenous Peoples have a right to their distinct political institutions. Not those that were imposed on them by the Indian Act, but governed by their Traditional Indigenous political institutions that still endure today. Articles 25 to 29 outline Indigenous Peoples relationship to their lands which they occupy or have occupied in the past. It also recognized their spiritual relationship to the land. And their responsibility to protect the land and its environment.

It's that spiritual relationship to the lands, waters, and flora and fauna that distinguishes Indigenous Peoples from settlers. Indigenous Peoples understand that they are a part of Creation and they have a role in Creation to maintain all that sustains them. They understand that to go against Creation is to go against their own survival. So when I say that all of the Declaration is a priority, I mean that in a holistic way.

ii A memorandum of understanding is an agreement that is signed by two or more parties. The MOU was signed by the federal government of Canada and the Wet'suwet'en Hereditary Chiefs in February of 2020, to recognize Wet'suwet'en rights and title under their system of governance

Indigenous Human Rights in the UN Declaration

Kenneth Atsenhainton Deer's perspective demonstrates that advancing climate justice and advocating for Creation must be undertaken with the core principles of justice and equality, in a way that honours Indigenous Peoples. In the UN Declaration, the following articles indicate the foundational elements pertaining to Indigenous rights to self-determination:

Article 1: Indigenous peoples have the right to 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 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 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. (emphasis added)

As shared by Dr. Deer, one of the violations committed against Indigenous Peoples and Creation as a result of colonization is a disregard for maintaining the balance of Creation. Instead of perceiving sacred lands and resources as an interconnected web of life and cherishing these ecological relationships, settlers claimed the land for themselves and the "Crown." The Canadian government has only ambiguously acknowledged the importance of implementing the UN Declaration, but has not yet actualized any concrete changes. As a result, Indigenous ownership of land and resources is still far from being recognized by law. Not only that, but the spiritual inheritance of their land, having passed down from Oral Traditions, stories, and beliefs that communicate their purpose to care for their lands, are still yet to be recognized. By officially affirming their inherent dignity and rightfully returning their titles, Articles 1 and 2 would ensure that Indigenous Peoples have full authority to exercise their human and environmental rights and freedoms as the original occupants of the lands.

Dr. Deer's personal experience at the UN Working Group on Indigenous Populations reinforces the pressing need for world leaders to honour the sovereign right of Indigenous Peoples to self-identify as they wish. The fact that some states opposed the designation of Indigenous Peoples as "Peoples" illustrates that the colonial structure of assimilation was still prevalent, even in the process of writing the UN Declaration. The immediate implementation of Article 3 of the UN Declaration is

essential. Indigenous Peoples must be able to freely determine their political status as they see fit, in order to achieve their freedom and equity. Articles 1, 2, and 3 are the overarching frameworks that affirm the agency that Indigenous Peoples already hold, ensuring that they can freely engage in their ways of living to foster their own environmental, spiritual, political, and socio-cultural development.

Long before the formation of nation states, Indigenous Peoples managed their own lands, resources, and spiritual relations with Creation. Therefore, it is just that they should enjoy renewed ownership to steward their lands and maintain their socio-political communities. The implementation of Indigenous rights to self-determination is one which sets the tone for this recognition throughout the entirety of the UN Declaration. As Dr. Deer stated, without this fundamental agreement, there is no actionable guarantee that decisions pertaining to environmental development are going to be made under the freely-determined will of Indigenous Peoples. Many Indigenous Peoples hold a spiritual relationship to their lands and waters. Honouring this truth is the only means for the Canadian government to see nature and human-kind to live in authentic harmony.

Restoration of Female Leadership in the UN Declaration

Dr. Deer also highlighted the matrilineal Indigenous customs where female leaders exercised their leadership and thoughtfully tended lands and resources. Indigenous women throughout colonialism were denied this right due to the overarching structures of patriarchy and male superiority. This is why implementing Articles 4, 22.2, and 44 is absolutely crucial. They seek to restore the matrilineal leadership that is honoured within Indigenous Traditions and recognize the capacity of women leaders to carry out environmental stewardship of the land.

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 22.2: 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 44: All the rights and freedoms recognized herein are equally guaranteed to **male and female Indigenous individuals**. (emphasis added)

The most meaningful way to address gendered power imbalances with the UN Declaration is for the Canadian government to be more responsive to Indigenous women's needs and contributions. If the Canadian government is to achieve progress

on this front, it should implement the UN Declaration and engage public servants in long-term research and development to ensure that they are fully aware of gender discrimination against Indigenous women.

In conjunction to Article 22.2, the government should turn to a long-term approach, such as providing increased social assistance and ensuring that unequal power relations are no longer overlooked. This will require a significant amount of attention and data collection, which do not yet exist but which will hopefully serve to reveal the specific Indigenous community-level requirements for such a transformation.

Although Article 4 does not dive into gender-specific recommendations, the emphasis placed on self-governance and rights to self-determination is a key step to reclaiming Indigenous women's leadership. For instance, prior to the enactment of the Indian Act, many First Nations were governed by a matrilineal system, with interdependent gendered relations between men and women. However, under the Indian Act, women were subjected to a new patriarchal system of order. The Act established a hierarchical rank based on gender, with women often being identified as subordinate to men.⁴⁸ Until 1985, the Indian Act denied status Indian women the right to retain their status if they married a man who came from a non-status household, while a status Indian man was permitted to keep his status despite marrying a non-status woman. Women were banned from participating in certain political processes and even lost their ability to keep their marital properties, despite their husbands abandoning them.⁴⁹ Needless to say, the discriminatory provisions of the Indian Act completely reversed the traditional leadership of First Nations women. As such, bringing Article 4 into effect can ensure that under the full guarantee of self-governance, Indigenous women are able to freely participate in the creation and implementation of equitable policies and laws affecting their communities and environments.



3.2: Ashley Bach-Wesley

Holistic implementation of the UN Declaration to uphold environmental human rights of all Indigenous communities

Ashley Bach-Wesley is a member of the Mishkeegogamang First Nation and a former youth in care. She is currently a Master of Science student in Environmental Planning and Management through Johns Hopkins University (Baltimore, Maryland) and a member of the Nishnawbe Aski Nation's Oshkaatisak (All Young Peoples') Council in Northern Ontario. In her leadership positions and personal life, Ashley works to address issues related to Indigenous peoples, the environment, and youth in/from care. Her professional experiences are in the fields of First Nations, social, and environmental policy.



I see climate justice as caring for the environment and everything within it, including water, the land, air, natural resources, humans, and non-human living beings, plus respecting and implementing the fundamental rights which each of these aspects holds—the environment has rights too! Climate justice involves human and Indigenous rights, which is incredibly important. Amongst Indigenous rights, the right to live on and learn from traditional territories is impacted by climate change. Traditional territories are either altered, damaged, or disappearing completely, and along with that comes the loss of traditional livelihoods and cultural resources. This is really important to consider in the context of colonialism and white supremacy, since this loss of territory is a continuation of cultural genocide.

There are also other direct impacts too—like falling through the ice while hunting at times of the year the ice should have been safe, the invasion of blacklegged ticks and lyme disease in Northwestern Ontario, or moose and caribou facing environmental stress and being pushed out of their normal habitat ranges. I also see climate justice as going a step further by acknowledging the rights that non-human beings have, like the Whanganui River [in New Zealand], which the Maori fought to have legal personhood and the protective rights which come along with that recognition. There are Indigenous communities in Alaska, Louisiana, and PEI which are literally sinking into the ocean. But that land and the plants, animals, and water bodies on it have a right to exist too. It isn't okay for human activity to take that away.

My First Nation has experienced some pretty bad environmental injustices. A lot of these are historical, for example in the 1930s, when dams were built to power the mines north of the community but flooded out the community. This also flooded a graveyard and apparently remains were seen floating away.

Mishkeegogamang only recently received a settlement for that. The mines themselves weren't remediated either and are now listed as a Category A on the National Orphaned and Abandoned Mines Initiative (NOAMI).ⁱⁱⁱ Mishkeegogamang has also experienced long-term boil water advisories which were recently lifted, then they went back on boil water but for "short-term."

Certain groups stand to benefit from climate change in the short term. For example, companies looking to access oil as the Bering Strait opens or governments taking advantage of the instabilities caused by climate change-related disasters. Communities who are kept in poverty due to colonialism are targeted to access their resources. Indigenous communities are already feeling the impacts of climate change. But with the structure and slowness of government processes, like legislation and funding agreements, climate change mitigation and adaptation are not happening fast enough. It's hard to get people in positions of power to take you seriously and take action if they adhere to colonial, patriarchal, and supremacist ideals.



ⁱⁱⁱ The NOAMI was launched in 2002 as a joint industry-government working group to review and address issues related to abandoned mines across Canada. *Category A* means that the site carries the "potential to cause environmental, public health and safety concerns." (NOAMI, www.abandoned-mines.org/en/)

The way legislation and policies are developed and reviewed needs to allow for Indigenous ways of knowing, collaborating, and decision-making. This is not an easy thing to do, since policy development and “consultation” is often approached as a one-way street—those consulted feed information to the system and then have to hope the system does something with it. There are often very strict time limits and other limits due to political feasibility.

Legislation, policies, and action plans related to climate change need to be intended for the most vulnerable peoples in Canada, including Indigenous Peoples, instead of being for the “general” population or to protect economic interests with Indigenous Peoples and other vulnerable peoples being an afterthought. Legislation, policies, and action plans need to be holistic. There’s a start to this with Canada’s climate change policy and progress frameworks but to me it seems more step-by-step, and future steps are at the will of future governments. Along with the legislation and policy, comes the need for actual implementation. There are many funding streams for Indigenous communities to address climate change, but in my experience, they are underfunded and oversubscribed.

Additional actions would include not just cutting greenhouse gas emissions but also revamping overall systems to be sustainable and promote wellbeing, for example, the domestic policy process described above, agricultural systems, international policy approaches, and social programs. This goes beyond just government and into societal norms. All of these are important to address and can contribute to climate justice.

With respect to First Nations, there are several areas of action that I think we would like to see:

- the development of sustainable housing on-reserve;
- the creation of jobs in the climate change and environment field;
- substantial action to restore degraded environments;
- transition to renewable energy for off-grid communities;
- reduction in individual, family, and community-level poverty;
- community-led social programs;
- opportunity to learn language, culture, and the land for everyone;
- and, communities/nations being supported to transition to self-governance and/or Indigenous forms of governance.

In some communities, this is already happening. But it is not accessible for all communities right now. This is important for urban Indigenous communities too, though that would need a different approach due to different jurisdictions and the diversity of Indigenous Peoples gathered in urban centres.

Sustainable Development in the UN Declaration

Based on Ashley Bach-Wesley's responses, it is evident that Indigenous Peoples in Canada are not only in dire need of significant reparations from environmental violations, but a *sustainable* form of development that focuses on improving the overall quality of life for Indigenous Peoples and ecosystems. According to the United Nations Development Programme, the concept of sustainable development seeks to secure a balance between "social, economic and environmental sustainability," recognizing the dual importance of protecting the environment and ending poverty for all.⁵⁰ The following articles in the UN Declaration indicate some of the important elements of sustainable development:

Article 17.3: Indigenous individuals have the right not to be subjected to any discriminatory conditions of **labour and, inter alia, employment or salary**.

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**.

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**.

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. (emphasis added)

When legally implemented, Articles 17.3, 20.1, 21.1, and 23 of the UN Declaration can act as a catalyst for sustainable development within Indigenous communities in Canada. As an integral part of climate justice, these articles pertaining to social support, economic development, housing, employment opportunities, and human health all emphasize the necessity of employing a holistic lens that aims to improve the overall living conditions of Indigenous communities in Canada.

One cannot claim that climate justice is truly achieved if the same development goals are not witnessed among Indigenous Peoples and non-Indigenous groups

across Canada. For instance, Indigenous Peoples are the original water protectors of Turtle Island, with water bearing great spiritual significance for Indigenous water carriers. Yet, there are still over 61 long-term advisories on public systems within Indigenous communities and more than 2,900 boil water advisories among First Nations households.⁵¹ Bach-Wesley's First Nations community, Mishkeegogamang, has experienced several boil water advisories. She has also pointed out that Indigenous Peoples historically and continually face exclusion in labour markets compared to non-Indigenous Canadians. The government must repair vulnerable infrastructure in Indigenous communities, prioritize community health, safeguard Indigenous workers, and create new green jobs in fields such as renewable energy generation, electric transportation, and energy efficiency. By facilitating an inclusive just transition through renewable development partnerships with Indigenous Peoples, the Canadian government can truly begin to deliver an equitable foundation for Indigenous reconciliation in Canada. In conjunction with Bach-Wesley's recommendations regarding the need to address high poverty rates, we must immediately prioritize attainable and sustainable employment opportunities for all Indigenous Peoples in Canada.

Ensuring Article 20.1, whereby Indigenous Peoples are free to enjoy their own traditional and economic activities, is a significant part in implementing the UN Declaration. Prioritizing Indigenous ways of knowing and their means of development is to honour the strength that Indigenous Peoples already have in preserving their spiritual relationships with the ecosystem and their communities. As such, meaningful achievement of environmental justice should not be colonially imposed by the Canadian government with assumptions on how Indigenous Peoples would like to see their development. Rather, all projects for improving the conditions for Indigenous livelihoods should be decided by Indigenous Peoples themselves so that they are the ones taking charge and shaping their desired paths to a decolonized, sustainable future.

As asserted in Article 21, barriers to such basic social services must be effectively eradicated through concrete Canadian policies that ensure Indigenous communities become more climate resilient. Ultimately, Indigenous rights must be truly placed at the centre of the federal government's approach to addressing climate change.

The implementation of the UN Declaration must be informed by Indigenous leaders and shaped by Indigenous-centered development policies and procedures. By implementing Article 23, the Canadian government can operationalize strategies co-developed with Indigenous expertise to alleviate the financial difficulties within Indigenous communities through the creation of green jobs. This would not only address the socio-economic disparities Indigenous Peoples face, but contribute to overall sustainable development in Canada.

3.3: Ben Powless

Creating sustainable livelihoods across Indigenous communities and recognizing Indigenous sovereignty, jurisdiction, and rights

Ben Powless is a Kanien'kehá:ka and Anishnabek writer and photographer, currently living in Ottawa. He has a degree in Human Rights, Indigenous and Environmental Studies from Carleton University. He was a co-founder of the Canadian Youth Climate Coalition and has worked with the Indigenous Environmental Network and Ecology Ottawa on climate change and Indigenous rights advocacy.



Climate justice for me is both a set of principles and a course of action. I see the basis coming from an understanding that marginalized communities are overwhelmingly affected by the actions that cause climate change, by the impacts of climate change itself, and even by proposed solutions to climate change. As such, those communities should be the ones listened to and have their rights respected and implemented. This applies to every level of government jurisdiction (local to national to international) as well as to private entities (companies, NGOs, etc.). It also requires action to prevent the worst harm from impacting these communities, in line with what we know about the latest climate science. At a big picture level, it acknowledges that some countries have been long-time beneficiaries of policies that led to the current climate crisis and puts more onus on those countries to act and support other countries that haven't. It also requires taking away the overwhelming influence that industries like fossil fuel companies have in shaping our current policies and laws.

We've seen repeatedly that environmental laws, when they even existed, have been chipped away to support industry first and foremost. Laws and regulations around pipelines are an example—oftentimes being struck down by courts for failing to take into account the rights of Indigenous Peoples. But even there, only communities willing to spend lots of time and money are able to pursue legal actions to protect their communities. Other communities that resort to peaceful protest often find themselves criminalized, more so than any company that has poisoned the water or air.

The logic of industry and capitalism is rarely ever questioned or challenged—its assumptions are assumed to be universal and sacred. We are told that we must make individual and collective sacrifices for the economy—even if most people are not benefitting from that economy, even if few of us have any say. So we are told we must support the fossil fuel economy in Canada because it makes money and creates jobs, no matter the cost, and no matter the al-

ternative—whether other industries would create more jobs or make more money. All this creates a system that is hostile to any attempts to challenge the status quo. So we saw a concerted effort to block Canada’s adoption of the UNDRIP, which could have seriously contributed to the cause of climate justice, because it was seen as an attack on business, which must be defended at all costs. Any similar attempts to democratize or reign in environmentally damaging industries will likely be met with similar antagonism.

Thinking back to mining laws, oil laws, laws around pipelines, and more, many of these were created as colonial relics that ignore Indigenous rights and jurisdiction entirely. We need to see these processes redesigned with the assumption that Indigenous communities have the right to free, prior, and informed consent (FPIC) from the outset. Other laws and planning have to be done in consultation with Indigenous communities—thinking of laws protecting waterways. On a bigger level, Indigenous groups should be at the table with Canada helping to decide on climate policies and goals, again with the knowledge that their communities are going to be overwhelmingly impacted. Part of this has to be in deciding funding priorities as well, knowing that many communities are already being impacted by climate change, and helping them to adapt will be crucial. Another aspect of this would see more power returned to Indigenous communities from governments, allowing them to practice their sovereignty and thus be better able to adapt according to their local context.

I think we need a huge change in federal “Indian” policy, beginning with the Indian Act. We need to see a dramatically different approach in how governments interact with Indigenous communities on a nation-to-nation basis, one of equals. Having Canada adopt and implement the UNDRIP and especially to encode the principles of FPIC at all levels of government decision-making would also go a long way to restructuring Canada and making it more climate resilient. We should see governments working to support Indigenous community efforts at adaptation and even climate change prevention—renewable energy, helping build livable homes, support for local greenhouses, etc.—with ambitious funding. We should also see Canada ensuring that Canadian businesses—particularly in mining and oil—are living up to these standards around the world, where we know now they’re often breaking those laws and harming Indigenous communities globally. We need to make sure Indigenous Peoples’ voices are heard at the international level as well—providing a guiding voice to UN climate negotiations, which for too long have also been more concerned with the “rights” of big business over people. And, of course, Canada should be providing funding and other support to those countries—and directly to impacted populations—who are most vulnerable to climate change around the world.

Free, Prior, and Informed Consent in the UN Declaration

Ben Powless highlighted the importance of Free, Prior, and Informed Consent (FPIC). This is critical for ensuring self-determination and decision-making powers for Indigenous Peoples in Canada. In the UN Declaration, the following articles articulate FPIC:

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: 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.

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 19: States shall **consult and cooperate** in good faith with the indigenous peoples concerned through their own representative institutions before adopting and implementing **legislative or administrative measures** that may affect them.

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 FPIC.

Article 29.1 and 2: 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.

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.

Article 32.2: 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.** (emphasis added)

FPIC is a means by which Indigenous Peoples are able to fully engage in decisions on all social, political, environmental, and cultural issues that impact their lives, livelihoods, and self-determining capacities. It is integral that these clauses are immediately implemented by the Canadian government as a guarantee of basic rights to natural resources, lands, and territories.

Powless makes a strong case that the six articles related to FPIC in the UN Declaration have been violated in Indigenous communities in Canada. This showcases an urgent need to integrate FPIC into Canadian policies. Each step towards ensuring climate resilience, climate change mitigation, and adaptation is inherently connected to Indigenous Peoples' right to development as well as the approval of projects that affect their sacred lands and resources. Indigenous Peoples in Canada have suffered from land appropriation and systemic violence for hundreds of years. The articulation of FPIC in the UN Declaration expresses this deep-rooted struggle and seeks reconciliation beyond providing mere environmental rights, by honouring Indigenous sovereignty.

Powless provided a list of everyday challenges faced by Indigenous communities throughout Canada as a result of mining, oil and gas projects, and pipeline expansions. All of these practices perpetuate modern-day colonization and continue to normalize the removal and displacement of Indigenous Peoples for economic profit. Rather than forcing Indigenous Peoples to adhere to Canadian legal systems and undergo complicated procedures in order to simply obtain the right to say "no" to a project, the implementation of FPIC gives Indigenous Peoples the right to establish their own requirements, criteria, and land development plans that respect their identities, voices, and circumstances.

The government of Canada, in full consultation, dialogue, and partnership with Indigenous Peoples across Canada, must establish legally binding national implementation plans to enact Free, Prior, and Informed Consent with definitive and transparent timelines.

3.4: Dara Wawatie-Chabot

Listening to the lived experiences of Indigenous women, children, and Elders in pursuing climate justice

Dara Wawatie-Chabot is Algonquin-Anishinabe from Kitigan Zibi Anishinabeg and Algonquins of Barriere Lake, Québec. They grew up and lived most of their life on-reserve and on Algonquin territory, learning about Anishinaabe language, culture, traditional medicines and ceremony. Dara has lived in the occupied region of Ottawa-Gatineau since 2014 to study Political Science at the University of Ottawa and has been working towards this degree while advocating for the rights and well-being of Indigenous Peoples in different walks of life. As a student, public servant, and community member, they aim to amplify the voices of those who lack access to publicity and influence due to remoteness or lack of urban presence and resources. Being in Ottawa, they have found space to share the truth of the experiences, perspectives and needs of rural and isolated Algonquin people, hoping to close the understanding and awareness gap that currently exists about the realities faced by those whose territory we exist on.



Climate justice is a reallocation of wealth and restructuring of the way that our government systems work as a whole. We need to take special care of Elders and children, as they are particularly disregarded in how our society functions. Climate justice is not just looking at our environmental issues through a legalistic lens. It's a lot deeper than that. It goes beyond humans, to re-balance what truly matters the most and to re-establish what our purpose is as humans on our lands.

Colonial systems are dependent on the extraction of resources and resource depletion: using as much as you can until there is nothing left. This is also why every system of oppression is linked together. To Indigenous Peoples, no respect for land means no respect for our bodies. This means that climate injustice is reflected as Indigenous Peoples have been treated as less than human and are taken for granted for the contributions that we made on our lands. Especially being from Québec, this injustice is relevant to my own Indigenous community. The French maintained a certain authority and gained increasingly more political decision-making powers over the Algonquin Peoples. As a result of this, Québec to this day continues to make legislation without the consideration of the First Nations community, our needs, or our protocols.

Here is an example of a recent struggle we faced. As Anishinabe, we take care of our lands, care about the future sustainability of our animals, and want a guarantee for the future livelihood of our children. Our community relies on large animals as food sources, like the moose, to get through our tough winters. Each year, SÉPAC (Société des établissements de plein air du Québec) gives out passes for hunting in Québec, which costs around \$2,000 annually per permit, bringing in a lot of revenue to the government. None of this revenue gets returned to our community, although these hunting grounds are located on our lands. The government does not allow us to make decisions on our own territories, allowing continued disrespect by non-Indigenous sport hunters, with no programs to support our livelihoods. They come in, hunt, take the head of the moose, and leave the bodies to rot everywhere, which we see all the time. Last year, our knowledge keepers and Indigenous hunters observed that the moose population was extremely low, and this problem was only recently recognized as an issue to be addressed. Our community worries about how we will feed our children in a couple of generations. We don't even have a grocery store; we are located next to highways and it is extremely difficult to access basic services. Anywhere else in a non-Indigenous community, this would be considered a national crisis. There are Indigenous Peoples still going hungry on a daily basis. What does this mean for our children—my children?

Children bring with them a lot of fresh ideas, representing change and growth. Yet, they are specifically excluded in government decision-making, conversations, and dialogues. Why do we exclude children and force them to know how to deal with the ramifications of climate change? Same thing applies for Elders. Elders are carrying knowledge before us—they are our living walking history books. They teach and understand life differently. They sat with our histories for a long period of time. This is how our Indigenous societies work, taking care of our children and respecting our elders.

Our house has been burning since the colonizers began to burn it. Trying to fix something so broken is exhausting for Indigenous Peoples. We have our own governance style. We don't all think the same yet we have been largely influenced by Western culture, ideas, lifestyles, and education. It was strategically done this way. The abused become the abuser. I tried to actively fight against these forces in the beginning, but now, I see things differently, where my responsibility is to my Indigenous community, my children, my people.

The UN Declaration has great intent and meaning. However, without the true restoration of Indigenous women's rights and political leadership, the work following the UN Declaration has the potential to recreate the same oppressive structures we talk about dismantling. For instance, Algonquin Anishinabe Peoples were traditionally a matriarchy, but with the destruction of female leadership, this restricted land ownership to men, resulting in women losing a lot of their power. Blatant sexism and gender-based violence in

Indigenous communities became apparent as well, since the way women and men existed among each other changed following colonization. Our values used to be centered around community, interconnectedness, and respect. With colonization, it became all about what one can gain and what one can keep. Disempowerment of Indigenous women in obtaining, exercising, and maintaining political control and authority from colonizers is the very reason we need an intersectional analysis of the UN Declaration.

In Canada, Indigenous Peoples are still living under the Indian Act. This is why we need to listen to Indigenous communities. Throughout generations, within our Indigenous ceremonies and cultures, our wealth is always determined by how much we give, not how much we have. This is why we must remember that the adoption of the UN Declaration is not total or complete, but find ways for governing structures to continue contributing to relieving these issues.

Protection of the Most Vulnerable in the UN Declaration

Throughout their commentary, Dara Wawatie-Chabot has illustrated some of the lived realities of Indigenous women, Elders, and children—the three groups that are particularly vulnerable to the ramifications of climate change in their community. They draw links between colonialism, environmental degradation, gender-based violence, and socio-economic inequalities that impact the most vulnerable Indigenous groups. The following articles highlight the need to focus on an intersectional implementation of the UN Declaration:

Article 7.2: 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 21.2: 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**. (emphasis added)

There are many structural barriers faced by certain Indigenous populations based on their gender, age, and state of socio-political marginalization. As it is evident that the fundamental rights of Indigenous women, children, and Elders are continuously being disregarded, we must amplify their abilities to share knowledge and their rights to protect themselves in the face of climate emergencies and environmental degradation. One of the comments regarding the UN Declaration by Wawatie-Chabot is that there needs to be a full recovery of women's leadership, as Indigenous wom-



en and girls continue to face disenfranchisement in society. The specific implementation of Articles 7.2 and 21.2 is therefore key. It would ensure that the intersectional experiences and structural limitations of these groups are given more attention and care, and that their perspectives and solutions pertaining to sustainability are considered as an essential part of decision-making in society.

Wawatie-Chabot demonstrates that following the wisdom of Indigenous female leadership can lead us into a regenerative and sustainable future, but this must mean giving space and providing increased opportunities for Indigenous women in political spheres.

Respect for Indigenous Traditional Activities and Biodiversity

One of the most striking real life examples provided by Wawatie-Chabot regarding environmental violation in their Algonquin-Anishinaabe territory relates to disregard for biodiversity and wildlife. This is exemplified by the over-hunting of moose, an essential food source; the abandonment of animal corpses on their sacred lands; and the use of revenues for the economic benefit of the colonial government. Such violations make the implementation of Articles 20 and 24.1 more pressing than ever. Respecting, appreciating, and valuing Indigenous Peoples in climate justice advocacy means ensuring that their traditional practices are also carefully and equally considered:

Article 20: 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**.

Indigenous peoples deprived of their means of subsistence and development are entitled to **just and fair redress**.

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. (emphasis added)

For generations, the Algonquin have hunted on the reserve's grounds, relying on the sustenance of moose meat for their families and other community members. Hunting is fundamental to the survival of many Indigenous communities and the preservation of their ways of life; it is not merely an activity for leisure and enjoyment. As such, before calculating the potential profits that these practices can bring to non-Indigenous governments and individuals, we must focus on implementing the most essential components of Indigenous rights, as articulated in Article 24.1. This article seeks to genuinely acknowledge that nature is connected to human health, and taking these basic resources away from Indigenous Peoples means reducing their resilience to the disastrous and life-threatening impacts of climate change.



3.5: Graeme Reed

Honouring the resilience of Indigenous Peoples to the impacts of climate change

Graeme Reed is a Senior Policy Advisor at the Assembly of First Nations, leading their involvement in federal and international climate policy. In his spare time, he is a doctoral candidate at the University of Guelph, studying the intersection of Indigenous governance, environmental governance and the climate crisis. He is of mixed Anishinaabe and European descent.



One of the issues that gets lost in climate conversations is the resiliency of First Nations and Indigenous Peoples to the impacts of climate. Often, the overwhelming discourse is that Indigenous Peoples and First Nations are vulnerable and that the changes to land are fundamentally altering how they exercise their culture, language, and customs. While it can be important, this victim-oriented framing can also overlook the resiliency of thousands of years of adaptation, and the relationality to the land and all of Creation assigned to Indigenous Peoples.

One of the things that Kyle Whyte talks about is “colonial déjà-vu.”^{iv52} The notion is that Indigenous Peoples have already experienced so much environmental change as a result of settlers arriving on their lands, that the impacts of climate are a repetition of this. Taking it from this lens, it requires a deeper level of analysis on why these structural vulnerabilities are created by Canadian policies. One of the immediate examples of this is Fort Albany and Kashechewan. The Indian Act positioned the community in a place that they must evacuate every spring because of floods. The Indian Act picked where First Nation ‘reserves’ would be created, often in the most environmentally-sensitive areas. This is a direct example of how Canadian policy actively reduces the adaptive capacity of Indigenous Peoples. Another example is the underfunding and prevalence of boil water advisories across Canada and the chronic challenges of 40,000 housing shortages on-reserves. These are legacies of Canada’s approach to Indigenous Peoples. Many NGOs are led by non-BIPOC^v folks, who often come from privileged backgrounds, such as myself, a heterosexual, white-passing man now onto my third degree. All these intersecting issues are manifested in how people build partnerships with Indigenous Peoples.

iv Kyle Whyte is a professor at the Department of Community Sustainability at Michigan State University, who has published a paper titled “Is it Colonial Déjà Vu? Indigenous Peoples and Climate Injustice” in 2017.

v BIPOC stands for Black, Indigenous, and People of Colour.

There is an overwhelming desire to reduce emissions without looking at the foundational structures of capitalism, colonization, and hetero-patriarchy. Our systems are created to actively disregard Indigenous Peoples. Justice, in my mind, is interlinked to decolonization, a rights and responsibilities approach, self-determination, and the broader political conversations needed for what is foundational to our connection to land. Whether social, racial, gender, or disability-related justice, these are all interrelated to one another—about creating an equitable society for our future generation.

One of the equations that the Intergovernmental Panel on Climate Change uses to measure vulnerability is that it is equal to sensitivity and exposure.⁵³ We're all exposed to different realities—most directly, the comparison I use is Richmond, British Columbia and Lennox Island First Nation reserve in Prince Edward Island. Both are at risk of coastal sea-level rise. The difference is their ability to fund solutions. Richmond, B.C. is relatively wealthy with a larger tax base and the ability to create sea levees to protect against the sea level rise. Whereas in Lennox Island First Nation, their challenge lies in their inability to obtain funding to do physical transformations required to address this. They have to look at re-localization, as Lennox Island Mi'kmaq people. The close link here is the notion of social determinants of adaptation—the determinants that lead to one's ability or inability to build adaptive capacities and solutions. There are lived daily realities of how this system operates in our communities.

Many governance frameworks are predicated on a colonial relationship, which actively excludes Indigenous Peoples and nations, disrespects treaties, and bases decision-making on unilateral pieces of legislation in contradiction to treaty arrangements. You don't even have to talk about climate to talk about environmental racism. There is a long history of decisions being made that are violent against Indigenous Peoples and their relationships to their lands. All of these need to be deconstructed not just for environmental justice, but Indigenous justice. The new Canadian Impact Assessment Act and the Canadian Energy Regulator underwent fundamental changes, yet they retained final decision-making by the federal minister. It doesn't matter how involved you are as a First Nation in the process, when the final decision-making is maintained by the Canadian federal government. This is a clear example of a paternalistic approach to environmental decision-making that prevents Indigenous nations from making decisions on their lands, waters, and territories.

The main architecture of governance in the Pan-Canadian Framework for Clean Growth and Climate Change is also another example. This framework is a pan-Canadian approach between federal, provincial, and territorial governments, exclusively.⁵⁴ This policy direction actively excludes Indigenous nations in a meaningful way. This issue also applies to the Canadian Environmental Protection Act, Navigable Waters Act, Fisheries Act, and many other pieces of environment-related legislation. Canada has not reckoned with

what these relationships truly mean and what is required to meaningfully create ceremony ground for Indigenous-led climate justice, all of which are foundational to addressing the catastrophic incoming climate change. These all require a clear deconstruction.

I think the issue with the UN Declaration is Article 46. In a 30 year journey to developing this Declaration, this article was the compromised position in order to get this passed. The most important way to conceptualize this Declaration is as “indivisible, interrelated and interdependent.”⁵⁵ Each of the minimum standards affirmed in the Declaration need to be conceptualized as a whole. I see this for treaty interpretation as well: what is the intent, but what is written on the actual pages? I see it as a catalyzing process to deconstruct Canada’s assumptions underlying Canadian environmental and climate policies, legislation, and regulations. I don’t believe in picking, choosing, and implementing those.

Article 3 regarding self-determination is also important. What are we doing to enable self-determined leadership and how do we do that in a way that is, for example, challenging the situation that colonization has put our nations in? For instance, there are Indigenous communities legitimately looking at pursuing carbon offsets and nature-based solutions to generate economic benefits to their communities. There is no choice otherwise, due to erosion of local



economies and their ability to make decisions on their lands, inability to participate meaningfully in resource-revenue sharing. These things occur without any sort of Indigenous participation. Oil sands is another perfect example. First Nations either had a choice to participate or the project was going to be developed irrespective of their participation. The foundational question is: how do we prevent those situations where Indigenous nations are required to make potentially compromising positions that fight the on-going desire to commoditize nature?

In order to truly foster Indigenous-led climate justice, we must embody Indigenous justice as a principle. This requires a foundational reflexivity towards Canada as a nation-state and how we divided them. An Indigenous-centered climate justice framework must address the over-emphasis placed on mitigation and meeting of GHG targets and its disconnect to the systemic injustices that are enacted by socio-economic systems that continue to exclude Indigenous Peoples.

Building Adaptive Capacities in the UN Declaration

Graeme Reed noted that Indigenous Peoples' ability to adapt to environmental changes is based on their profound relationship with the land, inherited through generations of Traditional Knowledge. As climate change and colonial extraction increasingly impact Indigenous landscapes and resources, the Canadian government must provide concrete financial and technical assistance to ensure that Indigenous Peoples have the appropriate resources to develop adaptation and mitigation measures. The following articles of the UN Declaration highlight the importance of this:

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 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. (emphasis added)

Articles 38, 39, and 41 emphasize that both the UN governing bodies and member countries are responsible for providing legislative measures and financial assistance to ensure the practical implementation of the UN Declaration. As Reed notes, many Indigenous Peoples are being threatened due to climate change, fragile environments, and changing environmental patterns on Indigenous lands. Concrete measures must be put into place to address the damages that have already been made to these communities and increase their future ability to anticipate and respond to hazardous events associated with climate change.

Even though Indigenous Peoples have embodied important strategies for adapting to environmental changes for many years, the magnitude of their climate-associated hazards limit their capacity to adapt. According to Reed, the situation at Fort Albany in Kashechewan offers a poignant example of how the Indian Act aggravated their harm in the face of natural disasters. Weak housing, lack of access to socio-economic resources, and reduced mobility means that this First Nation group had no substantial resources to be able to recuperate from flooding in their communities.

The stark differences in adaptive capacities to rising sea-levels between Lennox Island First Nation in P.E.I. and Richmond, B.C. clearly demonstrate that the Canadian federal government must actively increase funding and technical assistance so that Indigenous communities are not being disproportionately affected by climate change. Acknowledging that changes in climate undoubtedly exacerbate the struggles for many Indigenous groups without basic resources, the implementation of Articles 38, 39, and 41 is crucial.



CONCLUSION

One of the most important points raised by the Indigenous activists is that all states and people have an obligation to look at the UN Declaration in a holistic, inseparable, and comprehensive manner. No statement made in the UN Declaration should be regarded as an overestimation or an exaggeration, but rather as the absolute minimum standard for honouring the inherent rights of Indigenous Peoples.

Article 43 points to this fundamental principle:

Article 43: The rights recognized herein constitute the **minimum standards for the survival, dignity and well-being** of the indigenous peoples of the world. (emphasis added)

While it can be useful to highlight the critical need for implementing the UN Declaration by examining some of the ways in which certain articles are being neglected by the state, achieving Indigenous-centered climate justice and addressing global climate change means that every single clause of the UN Declaration, from its Preamble to the final Article 46, must be fulfilled without exception or restriction.

The UN Declaration is an imperfect document. Article 46.1 still authorizes nation states to put in place major limitations on the UN Declaration. This would allow the Canadian government to disregard its obligations on account of threatening the “political unity” and the “territorial integrity” of Canada:



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.**

Article 46.2: 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.

So, how the UN Declaration is implemented really matters. Both the development of the document and its implementation represent significant and indispensable steps towards the realization of Indigenous rights in Canada and around the world. We must ensure the transparent advancement of the implementation by ensuring that Article 46.2 is continuously kept accountable, where the limitations are only exercised “for the purpose of securing due recognition and respect for the rights and freedoms of others” and does not neglect Indigenous human rights. The federal government must also regularly report to Parliament on the methodologies, progress and shortcomings in implementing the UN Declaration.

A prioritization of the survival and well-being of Indigenous Peoples means honouring the interconnected nature of environmental and human rights for Indigenous Peoples in Canada. In advancing environmental protection and climate change adaptation strategies, the efforts of the Canadian government must actively consider the existing hierarchies of societal privilege and place the sovereign rights of Indigenous Peoples at the heart of climate justice.

CPJ believes in an Indigenous-led, intersectional approach to climate advocacy and public justice. Beyond pushing for legislative action, we believe that this approach must also permeate the general public and civil society. CPJ commits to continue learning from the stories, insights, and expertise of Indigenous Peoples and to give proper acknowledgement and space to Indigenous academics, professionals, and activists in their ways of knowing. We hope to continue in our endeavours to prioritize the lived experiences of Indigenous Peoples in orienting our continued pursuit of climate justice.

ENDNOTES

- 1 Dunn, Peter A. *Holistic Healing: Theories, Practices, and Social Change*. 2019.
- 2 UN Environment. "Indigenous People and Nature: a Tradition of Conservation." UN Environment, www.unenvironment.org/news-and-stories/story/indigenous-people-and-nature-tradition-conservation#:~:text=Their traditions and belief systems,sustainable use of natural resources.
- 3 DiAngelo, Robin. *White Fragility: Why It's so Hard for White People to Talk about Racism*. Allen Lane, an Imprint of Penguin Books, 2019.
- 4 Younging, Gregory. *Elements of Indigenous Style: a Guide for Writing by and about Indigenous Peoples*. Brush Education, 2018.
- 5 Kendall, Frances E. *Understanding White Privilege: Creating Pathways to Authentic Relationships across Race*. Routledge, 2013.
- 6 The Constitution Act of 1982. Canadian Government Pub. Centre, 1982.
- 7 First Nations Drum, August 7. "Anishinabek Condemn Term 'Aboriginal.'" *First Nations Drum Newspaper*, 7 Aug. 2008, www.firstnationsdrum.com/2008/08/anishinabek-condemn-term-aboriginal/.
- 8 Poulter, Gillian. *Becoming Native in a Foreign Land: Sport, Visual Culture, and Identity in Montreal, 1840-85*. 2010.
- 9 Fox Tree, Erich. "Global Linguistics, Mayan Languages and the Cultivation of Autonomy," in *Indigenous People and Autonomy: Insights for a Global Age*, edited by M. Blaser, W. Coleman, R. de Costa, and D. McGregor. UBC Press. (2010)
- 10 Vowel, Chelsea. *Indigenous Writes: a Guide to First Nations, Métis, and Inuit Issues in Canada*. W. Ross MacDonald School Resource Services Library, 2018.
- 11 United Nations Declaration on the Rights of Indigenous Peoples For Indigenous Peoples. Retrieved from <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- 12 Bruchac, Margaret. *Indigenous Knowledge and Traditional Knowledge*. 2014, repository. upenn.edu/cgi/viewcontent.cgi?article=1172&context=anthro_papers.
- 13 Turner, Angie. "About AFN." *Assembly of First Nations*, 3 July 2017, www.afn.ca/about-afn/.
- 14 Government of Canada, Statistics Canada. "Statistics on Indigenous Peoples." *Government of Canada, Statistics Canada*, 23 June 2020, www.statcan.gc.ca/eng/subjects-start/indigenous_peoples.
- 15 Government of Canada, Statistics Canada. 23 June 2020.
- 16 "About Canadian Inuit." *Inuit Tapiriit Kanatami*, 10 Mar. 2020, www.itk.ca/about-canadian-inuit/.
- 17 Weaver, Hilary N. *Social Issues in Contemporary Native America: Reflections from Turtle Island*. Routledge/Taylor & Francis, 2016.
- 18 Bruchac, Margaret, 2014.
- 19 "Mi'kmaq." *The Canadian Encyclopedia*, thecanadianencyclopedia.ca/en/article/mic-mac-mikmaq.
- 20 Stephen J. Augustine, "Oral Histories and Oral Traditions," in *Aboriginal Oral Traditions: Theory, Practice, Ethics*, ed. Renée Hulan and Renate Eigenbrod, 2008.
- 21 Antoine, Asma-na-hi, et al. "Diverse Sources of Indigenous Knowledge." *Pulling Together A Guide for Curriculum Developers*, BCcampus, 5 Sept. 2018, opentextbc.ca/indigenizationcurriculumdevelopers/chapter/diverse-sources-of-indigenous-knowledge/.
- 22 "Who Are Two Spirit People." *CCGSD*, 19 Aug. 2016, ccgsd-ccdgs.org/1-who-are-two-spirit-people/.
- 23 *Walking in Two Worlds: Understanding the Two-Spirit & LGBTQ Community*. Minnesota Two-Spirit Society, 2009.
- 24 Jacobs, Sue-Ellen. *Two-Spirit People: Native American Gender Identity, Sexuality, and Spirituality*. University of Illinois Press, 2005.

- 25 “Dispelling the Myths about Who Is and Isn’t a Status Indian | CBC News.” CBCnews, CBC/ Radio Canada, 23 Aug. 2014, <https://www.cbc.ca/news/indigenous/indian-status-5-things-you-need-to-know-1.2744870>
- 26 “How Does Native Funding Work? | CBC News.” CBC News, CBC/Radio Canada, 7 Feb. 2013, www.cbc.ca/news/canada/how-does-native-funding-work-1.1301120.
- 27 “Income.” Statistics Canada: Canada’s National Statistical Agency / Statistique Canada : Organisme Statistique National Du Canada, 30 Nov. 2015. www150.statcan.gc.ca/n1/pub/89-645-x/2010001/income-revenu-eng.htm.
- 28 Pam Palmater October 10, 2019. “Abolishing the Indian Act Means Eliminating First Nations’ Rights.” *Macleans*, 11 Oct. 2019, www.macleans.ca/opinion/abolishing-the-indian-act-means-eliminating-first-nations-rights/.
- 29 “Author Calls the Indian Act ‘a Post-Confederation Assimilation Tool.’” CBC News, CBC/Radio Canada, www.cbc.ca/player/play/1752995395546.
- 30 Press, *The Canadian*. “Supreme Court Ruling: Who Now Qualifies as an ‘Indian’ and What It Means for the Future.” *National Post*, National Post, 15 Apr. 2016, nationalpost.com/news/canada/supreme-court-ruling-who-now-qualifies-as-an-indian-and-what-it-means-for-the-future.
- 31 Indigenous Housing: Policy and Engagement. Native Women’s Association of Canada, 30 Apr. 2019.
- 32 Pamela Palmater. Originally published on Policy Options April 24, 2019. “Responsibility for Kashechewan’s Crises Lies with Crown.” *Policy Options*, policyoptions.irpp.org/magazines/april-2019/responsibility-for-kashechewans-crises-lies-with-crown/.
- 33 “Explaining Differential Vulnerability to Climate Change: A Social Science Review.” *Wiley Interdisciplinary Reviews Climate Change*, Mar. 2019, doi:10.3897/bdj.4.e7720.figure2f.
- 34 “The Indian Act.” *Indigenousfoundations*, indigenousfoundations.arts.ubc.ca/the_indian_act/.
- 35 Pam Palmater October 10, 2019.
- 36 The Constitution Act of 1982. Canadian Government Pub. Centre, 1982.
- 37 Milward, D. (2012). *Aboriginal Justice and the Charter: Realizing a Culturally Sensitive Interpretation of Legal Rights*.
- 38 Bruce, H., & Walkem, A. (2003). *Box of treasures or empty box?: Twenty years of Section 35*. Penticton, BC: Theytus Books.
- 39 Supreme Court of Canada (2020, February 21). *Newfoundland and Labrador (Attorney General) v. Uashaunuat (Innu of Uashat and of Mani-Utenam)*.
- 40 United Nations Declaration on the Rights of Indigenous Peoples For Indigenous Peoples. Retrieved from <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- 41 Mandate of the Working Group on Indigenous Populations. (n.d.). Retrieved from <https://www.ohchr.org/EN/Issues/IPeoples/Pages/MandateWGIP.aspx>
- 42 The UN Human Rights Council (UNHCR) is an intergovernmental committee responsible for addressing human rights violations around the world. Elected by the UN General Assembly, the council consists of 47 Member States of the UN. (“Welcome to the Human Rights Council.” OHCHR, www.ohchr.org/.)
- 43 City of Victoria (2013). *United Nations Declaration on the Rights of Indigenous Peoples for Indigenous Adolescents*. Retrieved from https://www.victoria.ca/assets/City~Hall/Mayor~Council/Documents/UNDRIP_Background.pdf
- 44 Galway, Lindsay P. “Boiling over: A Descriptive Analysis of Drinking Water Advisories in First Nations Communities in Ontario, Canada.” *International Journal of Environmental Research and Public Health*, MDPI, 17 May 2016, www.ncbi.nlm.nih.gov/pmc/articles/PMC4881130/.
- 45 United Nations Declaration on the Rights of Indigenous Peoples For Indigenous Peoples. 13 September 2007. Retrieved from <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- 46 Ibid.

47 “Memorandum of Understanding between British Columbia, Canada and Wet’suwet’en.” Province of British Columbia, 14 May 2020, www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/signed_mou_bc_canada_and_wetsuweten_may_14_2020.pdf.

48 “Marginalization of Aboriginal Women.” Indigenous Foundations, indigenousfoundations.arts.ubc.ca/marginalization_of_aboriginal_women/.

49 “Women and the Indian Act.” The Canadian Encyclopedia, thecanadianencyclopedia.ca/en/article/women-and-the-indian-act.

50 “Sustainable Development Goals.” UNDP, [www.undp.org/content/undp/en/home/sustainable-development-goals.html#:~:text=The Sustainable Development Goals \(SDGs,peace and prosperity by 2030.](http://www.undp.org/content/undp/en/home/sustainable-development-goals.html#:~:text=The Sustainable Development Goals (SDGs,peace and prosperity by 2030.)

51 Kappler, Maija. So, What Do We Do With Canada Day’s Ugly Legacy? Huffington Post Canada, 1 July 2020, www.huffingtonpost.ca/entry/canada-day-black-indigenous_ca_5efa0c9bc5b6acab28451ca1.

52 Whyte, Kyle. “Is It Colonial Déjà Vu? Indigenous Peoples and Climate Injustice.” SSRN, 6 Mar. 2017, papers.ssrn.com/sol3/papers.cfm?abstract_id=2925277.

53 “Determinants of Risk: Exposure and Vulnerability.” Intergovernmental Panel on Climate Change, www.ipcc.ch/site/assets/uploads/2018/03/SREX-Chap2_FINAL-1.pdf.

54 Canada’s Plan to Address Climate Change and Grow the Economy. Pan-Canadian Framework on Clean Growth and Climate Change, Dec. 2016, www.canada.ca/content/dam/themes/environment/documents/weather1/20161209-1-en.pdf.

55 “Human Rights Principles.” United Nations Population Fund, 1 Jan. 1970, www.unfpa.org/resources/human-rights-principle



Citizens for Public Justice (CPJ) is a national, progressive organization of members who are inspired by faith to act for social and environmental justice in Canadian public policy. Our work focuses on three key policy areas: poverty in Canada, climate justice, and refugee rights. For more than 50 years, justice-oriented people of faith, along with churches and religious orders, have joined their voices as Citizens for Public Justice. Together, we're working towards a better Canada.

Learn more at cpj.ca.

Citizens for Public Justice

334 MacLaren Street - Suite 200

Ottawa, ON K2P 0M6

Unceded Algonquin Territory

cpj@cpj.ca

1-800-667-8046 | 613-232-0275