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# Holding Canada Accountable: An Evaluation of Canada's Compliance to the United Nations Declaration on the Rights of Indigenous Peoples

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**Holding Canada Accountable:**  
**An Evaluation of Canada's Compliance to the United Nations Declaration on the Rights of**  
**Indigenous Peoples**

by

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Wilfrid Laurier University

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### Abstract

Compliance of human rights norms requires the application of pressure from a multitude of directions and levels. It takes individual advocacy, micro-system/organizational/community-level pressure, and macro-level pressure from other nation-states and international organizations and governance bodies. This MA study focuses on the mechanisms employed by the United Nations to monitor the compliance of signatory nation-states to the standards established in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), with particular focus on Canada. A crucial goal of this study is to translate the UN Special Rapporteur on the Rights of Indigenous Peoples (UNSRRIP), James Anaya's, findings on the situation of Indigenous Peoples in Canada into a quantified score of compliance to the Articles of the UNDRIP in three areas, (1) self-government and self-governance, (2) consultation and free, prior and informed consent (FPIC), and (4) land and natural resources, in order to establish a baseline score for subsequent evaluations to be compared for the purpose of monitoring compliance to the Declaration over time. The study finds that UNSRRIP's country reports have significant gaps for reporting on the compliance of member nation-states to the rights set out in the declaration and advocates the regular use of the UNDRIP compliance evaluation tool to not only encourage more complete and regular UNSRRIP reports, but also to support better compliance with UNDRIP overall.

*Keywords:* United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP, Indigenous Rights, Settler Colonialism, Decolonization/De-colonization/Decolonizing, Self-determination, Sovereignty, Human Rights Monitoring.

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## Introduction

Indigenous Peoples globally experience gross inequities relative to non-Indigenous populations, having been deprived of rights not just in the past, but today. These differential standards of living and physiological, psychological, economic, social, and political wellbeing can be attributed to the legacies of colonization and the uneven global economic order (Anaya, 2014; Mitchell & MacLeod, 2014; Canadian Human Rights Commission, 2013; UN Permanent Forum on Indigenous Issues, 2009; Kirmayer, Brass, & Tait, 2000). Neither the social/political/economic/legal inequities experienced by Indigenous Peoples, nor the deprivation of rights to Indigenous Peoples that enable them are just issues for the so-called Third World, or Global South, such inequities and deprivations of Indigenous Peoples' rights are seen in the so-called First World, or Global North. As a settler colonial nation state, Canada is one such country. Many of Canada's first Peoples experience third world conditions, which is common within settler colonial nation-states: the dominant, non-Indigenous populations live in relative wealth while the Indigenous populations are subject to disenfranchisement and oppression by such means as assimilative policies and practices and territorial displacement (Barker, 2010; Tuck & Yang, 2012; Veracini, 2010). This undesirable reality in which Indigenous Peoples live within otherwise prosperous nation-states has led to the establishment of another category: the Fourth World (Manuel & Poslums, 1974).

The United Nations Declaration on the Rights of Indigenous Peoples emerged from a process of gradual international recognition for the need to recognize and respect human rights, which began following WWII. The first significant international recognition of human rights within international humanitarian law was with the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948. While the UDHR has

been subject to much debate and criticism since its adoption, it has seen a great deal of success in its implementation into domestic laws, policies, and institutional mechanisms. On the other hand, the UNDRIP, which recognizes Indigenous Peoples' collective social, economic, and cultural rights, as well as other rights including rights to traditional territories and self-determination, has not been significantly implemented by signatory states—with the exception of a few very progressive states in Latin America (i.e., Bolivia, Ecuador) (Bellier & Préaud, 2012; Radcliffe, 2012; United Nations General Assembly, 2007; UN Permanent Forum on Indigenous Issues, 2015).

As one of only four countries that opposed the passing of the UNDRIP in 2007 when it was officially adopted by the UN General Assembly, Canada came to officially support the declaration three years later in September 2010.<sup>1</sup> Consequently, there has been significantly less time within the Canadian context for the implementation of the rights standards set out in the UNDRIP. But perhaps more important than timing is the language used in Canada's official endorsement of the declaration upon ratification. In the official statement of endorsement of the UNDRIP the federal government asserts that, “[t]he Declaration is an aspirational... non-legally binding document that does not reflect customary international law nor change Canadian laws...” (Department of Aboriginal Affairs and Northern Development Canada, 2010b). It is true that the UNDRIP, being a *Declaration* and not a *Treaty*, is non-binding. However, numerous legal scholars assert that many aspects of the Declaration do indeed constitute customary international law, including the rights to self-determination, autonomy or self-

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<sup>1</sup> The other three countries to vote against the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) were Australia, New Zealand, and the United States of America. See: General Assembly “Resolution 61/295: Declaration on the Rights of Indigenous Peoples” UN Doc A/61/67,



government, cultural rights and identity, land rights as well as reparation, redress and remedies (Boyer, 2014; Graham & Wiessner, 2011; Gunn, 2011; International Law Association, 2010; UN Permanent Forum on Indigenous Issues, 2014). Although Canada and other states have attempted to minimize UNDRIP by claiming that it is merely a declaration, rather than a treaty, this claim is disingenuous, because the UN Permanent Forum on Indigenous Issues (2014) states that signatories "...have an obligation to respect and promote these rights" (p. 9). Moreover, it is a well-accepted rule of law that the *title* of the law is not the law itself; you don't obey the title of the Patriot Act, but the contents of the law.

The purpose of this study is two-fold: firstly, the aim of the project is to contribute to growing efforts focused on holding states accountable to their commitments to the UNDRIP, by developing a means of evaluating their compliance to the UNDRIP; and secondly, to contribute to the decolonization of settler colonial nation-states. For both of these objectives, I focus especially on Canada because of my position as a Settler Canadian and my commitment to challenging the systems of oppression from which I personally benefit. I centralize Canada's compliance to the UNDRIP within a decolonization framework, asserting that, while compliance to the Declaration is not a mechanism of decolonization in itself, it is necessary for creating the space for the decolonization of settler-colonial states and societies to take place.

In Part One of this work I discuss relevant literature and establish my theoretical framework. I begin by presenting my positionality and standpoint, situating myself within this research. Next, I define concepts and terms that are necessary to understand for the proceeding discussion and then outline the relevant Canadian and international contexts. Within the Canadian context, I provide an overview of the socio-economic and political situation of Indigenous Peoples in Canada. In the international realm, I discuss the development of the

UNDRIP, including Canada's position with regards to the Declaration. Subsequently, I introduce the theoretical frameworks that inform this research. Finally, I discuss the literature of international human rights norms and norm compliance.

In Part Two of this work I discuss the methodology I used to answer my research questions. I begin by establishing my research paradigm, address ethical considerations of the project, and consider the importance, utility and relevance of the findings and the tool within the discipline of Community Psychology. Next, I outline the procedure and describe the Indigenous Rights and Social Justice (IRSJ) research group's UNDRIP assessment tool that I helped to construct. I explain the operationalization of the tool, including the use of document analysis of former UN Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP), James Anaya's, (2014) Canada report for the evaluation of Canada's compliance to the rights standards set out in the UNDRIP.

In Part Three, I describe the results of the study. I present the scores for each of the UNDRIP Articles within the purview of this research and ground the scores with evidence from the analysis.

In Part Four, I discuss and interpret the findings. I begin by unpacking Canada's final compliance score, clarifying what the score actually means, relating the score back to the UNDRIP assessment tool's conceptual definition. Next, I discuss the scores allotted to each of the three theme areas that I focused on: consultation and free, prior and informed consent, self-government and self-governance, and land and natural resources. I then discuss the implication of the research, where I situate the work within the socio-political context and develop a decolonization framework. Subsequently, I identify the limitations of the study and the data that I used for the compliance assessment and then highlight the significance of the research,

including the contributions to knowledge and practice. Finally, I articulate the means by which I plan to mobilize the study's findings and the UNDRIP assessment tool and provide direction for future research.

### Standpoint

As a survivor of child sexual abuse, I have a deep, personal relationship with and understanding of the experience of powerlessness, exploitation, violation, and domination. I regard this experience as the catalyst for my drive to contribute to working towards social justice and, in particular, decolonization. As is the case for so many non-Indigenous people who are ‘aspiring allies,’ the first time I came to understand the historical and contemporary realities of colonialism in Canada, I felt an overwhelming sense of guilt. Or rather, shock, guilt, and then outrage. This is typically the initial reaction when a person in a privileged position has their consciousness raised, or is, in other words, “unsettled” (Goodman, 2011; Reagan, 2011). As such, acting out of guilt is often a first step in the journey towards allyship (Goodman, 2011). It is also the least effective, as it is about self-preservation—acting not out of a belief in social justice, but out of motivation to avoid the discomfort brought on by the feelings of guilt.

In my case, however, the guilt quickly became secondary, rather than the driving force that motivated my journey to learn and contribute to decolonization. What took precedence were the memories and feelings that I had of my own experiences with trauma and rights violation. What drove me, and continues to drive me today, is my belief that no one should ever know the pain of having their rights violated, of being oppressed, of being dominated. Initially, I came to university with the intention of pursuing training as a trauma counsellor, focused on working with victims of child sexual abuse. But upon learning that Indigenous Peoples all around the world, including within Canada, have been and continue to be systematically oppressed, and that my existence as a Canadian Citizen—particularly with British blood on one side and Swiss-German Mennonite blood on the other—makes me complicit in this oppression, I realized that I could no longer focus on individual amelioration but, rather, that I need to focus on transforming

systems of oppression. I dedicated myself to the destruction of settler colonialism: that meant critiquing many of the systems that govern Canadian society.

I came to my Master's degree program with undergraduate training in community psychology and global studies, a combination of international development, peace and conflict studies, and culture and globalization. This academic background led me to avenues of experiential learning within community contexts that further reinforced a keen passion for social justice, human rights, and intercultural relations. Having gained experience directly with human rights work as a research intern at the Commission on Human Rights and Administrative Justice (CHRAJ) in Accra, Ghana, the implementation and enforcement of international human rights norms into nation-states has continued to be a focus of my work for a couple of years now.

But beyond merely looking at the implementation of international human rights norms from a Westernized gaze, I have come to advocate a shift of the gaze onto the Global North, including Canada, to avoid both externalizing the implementation of human rights as a concern or problem only in the Global South and erroneously viewing the West as having the role of enforcing norms. My approach has developed over time since 2012, when I began volunteering at the Aboriginal Student Centre (ASC) at Wilfrid Laurier University, in Waterloo, Ontario, during my community service-learning (CSL) placement for an undergraduate course in community psychology. This placement was the catalyst for my awakening to the realities of Canada as a contemporary colonial context, as I described earlier. Prior to this placement I was locked into the mindset that so many Settler-Canadians are trapped in: knowing that Canada was colonized hundreds of years ago and convincing myself that the tensions of the events are in the distant past and, therefore, have no relevance to the present or the future. As discussed by Regan

(2011), I was “unsettled” from my settler colonial, white, male privilege. I resolved to change my life.

Over the course of the last three years I have continued to seek out more opportunities to learn and to challenge my thoughts and assumptions. During that time I have been involved in research with Dr. Terry Mitchell’s Indigenous Rights and Social Justice research group, as well as a number of subsequent projects with the Laurier Aboriginal Student Centre, including a the creation of a resource document on Indigenous allyship and a culturally competent, community-based outcome evaluation of their community soup lunch program. Apart from my work on Indigenous rights and health-related projects, I have developed numerous friendships with Aboriginal people. This has lent me insight into the impacts of colonialism that I would not have otherwise gained. As a result of the culmination of these experiences I have made a commitment to actively challenge colonialism in all aspects of my life.

In the following chapter I provide an overview of the context within which this research is situated. However, before moving forward, I would like to acknowledge the unceded traditional territory of the Neutral, Anishinabe, and Hodinohsonih Peoples, on whose land the entirety of this work occurred.

## Terminology and Context

How we imagine Indigenous rights depends on the terms we habitually use. In order to clarify the biases of different approaches and hopefully reduce, if not avoid, potential pitfalls of using generalizing and externally imposed terms, I must define and contextualize the terminology others and I employ prior to delving into the literature that relates to the UN Declaration on the Rights of Indigenous Peoples and the context within Canada.

### Terminology

**Indigenous.** While labels and categories are essential for human processing, coming up with labels can prove to be problematic. This is particularly the case when one attempts to lump distinctive things, people, and groups, into one category or label. Doing so often leads to an over-essentialization or homogenizing effect, wherein the distinctiveness and diversity of a group becomes irrelevant, overlooked, and even unknown by those outside of the group (Paradies, 2006).

This is the case with the term *Indigenous*. Thousands of distinct Indigenous Peoples exist over the world. Thus, the assumption that all Indigenous Peoples fit within a homogenous group and share the same cultures, beliefs, histories, and perceptions is an ill-conceived opinion; the distinctiveness and scale of comparison between the cultures, languages, social and political institutions, etcetera, are vastly different from one another. Scholars, activists, nor colonists themselves can agree upon a definition of the word *Indigenous*, let alone a list of whom that term should include. The number of Indigenous people and the number of Indigenous groups one counts depends on one's definition of the term (Champagne, 2013). Even the UN working Group on Indigenous Populations opted not to define Indigenous in the UNDRIP.

However, the UN Permanent Forum on Indigenous Issues and some scholars frequently identify certain shared characteristics as fundamental. One of these characteristics is having ancestral or cultural connection to land-based cultures (by “land” in this context I am referring generally to all natural resources, as different Indigenous cultures see themselves as tied to different resources, including water, mountains, etc.) that are rooted in place and having existed in their territories since prior to colonization (Deloria, 2003; UN Permanent Forum on Indigenous Issues, 2009). In the context of Canada, the domain of the term *Indigenous* and the Peoples referred to by the term have shifted over the years. A court ruling in 2016, for example, determined that in Canadian law, the term applied not just to those people previously classified as *Indian* under various iterations of the Indian Act (1874; 1926; etc.), and to people such as the Inuit whose coverage had been added in the 1970s, but also to Métis people. Miller (2004) notes that naming practices in Canada have consistently served to minimize the number of people to whom Canada is obliged to acknowledge, respect, pay, consult, or negotiate with.

**Aboriginal.** The term *Aboriginal* similarly acts as a homogenizing label; however, in this case the Canadian government established the label in order to easily make reference to the three groups of Indigenous Populations within Canada: First Nations/ Indian (Status, non-Status), Inuit, and Métis. This term first came into official policy with its inclusion into Section 35 of the Canadian Constitution Act, 1982. The term acts as a universalizing umbrella that generalizes the First Nations, Métis, and Inuit. Even the words *status/non-status*, *Indian*, *First Nations*, *Métis*, and *Inuit* are all problematic as they disregard the great diversity that exists within and between First Nations, Métis, and Inuit communities. For instance, just within the First Nations populations, “there are currently 617 First Nations, representing more than 50 cultural groups and living in over 1000 communities and elsewhere across the country” (Anaya, 2014, p. 4). To



provide a glimpse into the diversity of First Nations in Ontario, 133 First Nations communities represent numerous cultural groups including, but not limited to: Hodinohsonih (made up of six Nations and listed East to West based on their traditional geography: Mohawk, Oneida, Onadonga, Tuscarora, Cayuga, and Seneca), Anishinabe (including Ojibwa, Algonquin, Nipissing, Odawa, Mississauga, Sauteaux, Oji-Cree, Potawatomi), Wyandot (Huron), Neutral, Delaware, and Cree (<http://www.chiefs-of-ontario.org/>).

I recognize the great heterogeneity that exists under the terms *Indigenous* and *Aboriginal*. It is important to establish that when I use the terms *Indigenous* and *Aboriginal* (which I will use interchangeably) throughout the following paper I am referring to the diverse array of groups and Peoples that the terms represent. Particularly, I will be using these terms because the UN Declaration on the Rights of Indigenous Peoples concerns all of these diverse groups.

**Settler.** The term *settler* has been defined and is understood in multiple ways (Barker, 2013). I personally utilize Barker's (2013) understanding of the term, which deviates from other definitions, which "...portray settler peoples ahistorically (Veracini, 2007), aculturally (Veracini, 2008), and without identity..." most often spoken of as "... 'colonisers,' or referred through rough groupings of ethnicity such as 'Euro-American,' or even racially as 'white'" (p. 67). Barker provides a more nuanced understanding of the term, separating it into three modes of understanding. The first is *settler coloniser*, which is "the active agent of settler colonization through exercising colonial agency to usurp Indigenous lands and enact spatial transformations" (p. 680). The second is *Settler identity*, which presents the 'Settler' as a "situated, disavowed, and very powerful identity construct...posited on the collective expression of similar mentalities (patterns of thought and praxis) across various social divisions (class, national, regional, cultural, ethnic, etc.)" and which is formed by the usurpation and occupation of Indigenous people's

lands, and the attempts to justify and naturalise these transfers” (p. 68). The third is *settler as individual or collective subject*, which incorporates the identity trialectic wherein there are three possible subjectivities in the Settler imagination: “settlers, the ‘civilised,’ predestined, or otherwise ‘special’ group of people seen as ‘self’; exogenous Others, the dehumanised but valuable ‘chattel slave’ populations, used for labour but without autonomy; and Indigenous Others, whose very presence is a threat to the settler subject, and therefore targeted for elimination and erasure” (p. 68-69).

In this study, when I use the terms *Settler* or *Settler-Canadian* I am referring to the non-Indigenous population who have inherited a particular identity and mentality about Canada and non-Indigenous peoples’ occupation of the land, which is based on the settler-colonial agenda of usurping Indigenous lands and erasing Indigenous people physically and from the social consciousness. It is important to make clear that those non-Indigenous people who have become conscious of their privilege and complicity in the oppression of Indigenous Peoples cannot rid themselves of their Settler identity. Barker (2013) describes this in a personal reflection of his own position as a Settler-Canadian:

I have come to see the impact of deep colonising...on my individual Settler identity, but that does not mean I know how to address it. I can intend to be decolonising and even strive to decolonise, but I remain colonial because I cannot extract myself from the institutions of privilege and flows of power that settler colonialism has and does situate around me. Alfred and Corntassel position Settler power as the “fundamental reference” of both colonial dynamics and the Settler “world” (2005 p.601), and that power is wrapped around every Settler, even those who try to break free. I cannot *refuse* my way out of settler colonial space. (p. 346, emphasis in original)

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

Great philosophical debate has raged for thousands of years in order to determine what constitutes moral and ethical behaviour. From this debate, notions of human rights, and thus, norms and understandings associated with how people should be treated, have evolved. This evolution has developed over time from God-sanctioned rights (or behaviours that are naturally moral and right—or wrong) to human-defined rights (the prescription of laws and customs through state institutions) (Heard, 1997; Romanow, 2010). But the nature of human rights, as we know them today, stem from the 17<sup>th</sup> and 18<sup>th</sup> century European Enlightenment (Romanow, 2010).

These rights came into full effect on the international stage after the conclusion of World War II, and for the first time, the interest in human suffering outside one's own borders outweighed the norm of sovereignty (Romanow, 2010). The Universal Declaration of Human Rights (UDHR) of 1948 was established by the United Nations in an attempt to prevent the atrocities of World War II from happening again (Romanow, 2010). The ratification of the UDHR by member States was nearly unanimous—with 48 countries in support, 8 abstentions, and no votes of opposition (Lauren, 2003).

Following the establishment of the UDHR international human rights and international humanitarian law were expanded/further developed by several conventions, treaties, and declarations created for minorities and sub-populations in order to accommodate those groups that experience significant disenfranchisement and need additional protections. Emerging from this human rights framework, the UN Declaration on the Rights of Indigenous Peoples is the culmination of over 30 years of work by Indigenous Peoples appealing to the United Nations (Akwesasne Notes, 2005). In 1982 the official Working Group on Indigenous Populations

(WGIP) was established as a subsidiary body within the United Nations overseen by the Sub-Commission on the Promotion and Protection of Human Rights, the main subsidiary body of the United Nations Commission on Human Rights (Alfredsson, 1989). In 1985 the Working Group began drafting a Declaration of Indigenous rights, based on discussions in international circles and existing drafts, which began in 1977 (Alfredsson, 1989; Akwesasne Notes, 2005). The intention of this draft was for the UN General Assembly to adopt it upon its completion (Alfredsson, 1989; Akwesasne Notes, 2005).

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) became an official international standard of Indigenous rights, the second after the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (ILO No. 169) (UN General Assembly, 2007). This development established the recognition by the UN General Assembly of the oppression of Indigenous Peoples globally and the need for changes to domestic laws and practices to be envisioned and enforced in order for Indigenous Peoples' rights to be met.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has a history of over thirty years, despite only being an official Declaration since 2007. The Declaration also has roots in the territory from where I am writing this work, as a number of Hodinohsonih diplomats attended the United Nations to create the Working Group on Indigenous Peoples, which was responsible for drafting the numerous iterations of the final draft of the UNDRIP that we have today (Akwesasne Notes, 2005). In reality, the legacy of the UNDRIP goes even further back to Chief Levi General (known as Deskaheh), a hereditary Cayuga chief from Ohsweken (a village located on the Six Nations of the Grand River First Nation reserve), who, in 1923, was the first Indigenous person to raise a grievance against a settler colonial

government at the League of Nations in Geneva, Switzerland (Akwesasne Notes, 2005). After waiting for one year for the League to recognize him, he was denied access to the League because Indigenous Peoples lacked recognition as nations (Akwesasne Notes, 2005; UN Permanent Forum on Indigenous Issues, 2008). Despite ultimately failing in his mission, Chief Deskaheh's efforts were significant. They initiated the persistent assertion of the legitimacy of Indigenous nationhood at an international level by numerous Indigenous leaders and diplomats, which ultimately led to a dramatic transformation of UN-Indigenous relations, out of which came the development and adoption of the UNDRIP.<sup>2</sup>

Of the 158 countries in the UN General Assembly that voted on the UNDRIP in 2007, 143 countries voted in favour of the document, 11 countries abstained, and 4 countries rejected it (Australia, Canada, USA, and New Zealand) (Charters & Stavenhagen, 2009). Although they did not spell precise justifications for their actions, these countries likely chose not to endorse the passing of the UNDRIP because their governments felt that doing so would give the Indigenous Peoples within their states too much power and control over the lands and resources within the nation-states' borders (Charters & Stavenhagen, 2009).

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<sup>2</sup> It is important to note that the UNDRIP is not universally accepted by Indigenous people, communities, and scholars, particularly due to the fact that it is situated within the United Nations and does not explicitly recognize the right to Indigenous sovereignty apart from the nation-state. For example, Champagne (2013) asserts that the UNDRIP "...does not recognize the extra-national-legal character of indigenous nations, and requires submission of indigenous views, claims, and interests to national institutions. Indigenous nations are required to accept nation-states as the primary form of political and legal process, which results in a form of political and legal integration. If this is done, then indigenous issues can be solved within nation-state legal and political frameworks, at least from the point of view of the nation-state government. To do otherwise is to ask for special rights, which is not compatible with a democratic nation-state of politically equal citizens" (p. 20).

Canada remained in opposition to the UNDRIP until November 14, 2010 when the federal government finally released an official statement that they had signed onto the UNDRIP. However, while this was seen as a promising step forward with regards to Indigenous rights in Canada, the official statement released by the Government of Canada brings into question the Government's level of commitment to complying with the Declaration. For instance, the Government carefully crafted the language of the statement to indicate that they did not interpret the Declaration as legally binding, but rather, as an "aspirational document" (Department of Aboriginal Affairs and Northern Development Canada, 2010a/2010b). Additionally, the statement indicates that the adoption of the declaration does not mean that the Government of Canada will make any amendments to domestic laws and policies in order to reflect the articles of the UNDRIP, particularly in the domains of self-government and self-governance, free, prior and informed consent (FPIC), and land and natural resource rights (Department of Aboriginal Affairs and Northern Development Canada, 2010a/2010b). In doing so, Canada was no different from many of the countries that originally ratified the law. Guatemala, for example, inserted a domestic preamble that says that it is ratifying, insofar as it does not violate the established constitution and laws. One explicit statement about FPIC provided by the Government of Canada comes from the official federal statement on the World Conference of Indigenous Peoples' outcome document:

Agreeing to paragraph 3 of the Outcome Document would commit Canada to work to integrate FPIC in its processes with respect to implementing legislative or administrative measures affecting Aboriginal peoples. This would run counter to Canada's constitution, and if implemented, would risk fettering Parliamentary supremacy... Further, Canada cannot support paragraph 4 in particular, given that Canadian law, recently reaffirmed in

a Supreme Court of Canada decision, states the Crown may justify the infringement of an Aboriginal or Treaty right if it meets a stringent test to reconcile Aboriginal rights with a broader public interest. (Permanent Mission of Canada to the United States, 2014)

However, with the recent change in federal leadership, the discourse has shifted. Prime Minister Justin Trudeau has officially committed to the implementation of the UNDRIP, publically and through mandating the Minister of Indigenous and Northern Affairs to implement the UNDRIP as his first priority (Prime Minister Trudeau, 2015). Additionally, the government of Canada has shifted its position formally within the United Nations, declaring that Canada now endorses the Declaration without reservations (Hill, 2016). In spite of these positive public promises, and inspiring words about reconciliation, it is already apparent that much of what has been said could have just been a ploy to garner the Indigenous vote. One example of how Trudeau has already broken his promises to respect the rights of Indigenous Peoples is the issuing of permits to the Site C dam, allowing the construction of the BC Hydro project to continue despite ongoing legal challenges by two First Nations, even after the federal-provincial review panel “found that the dam will result in significant and irreversible adverse impacts on Treaty 8 First Nations” (Gilchrist, 2016).

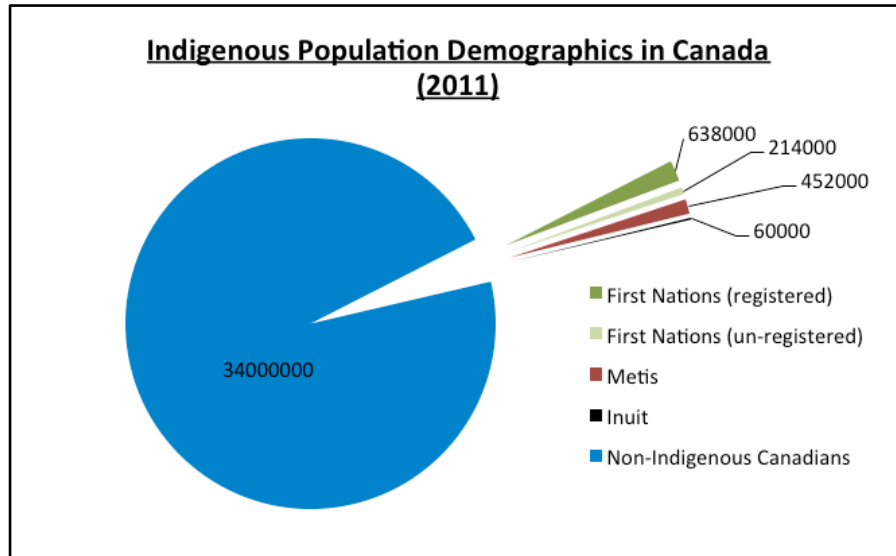
### **Contextualizing Indigenous Peoples in Canada**

Indigenous people in Canada constitute approximately 4.3% (1.4 million) of the population; 45.5% of which are registered (status) Indians, or First Nations, 32% are Métis, 15% are unregistered (non-status) First Nations, and 4% are Inuit (see figure 1).<sup>3</sup>

#### **Figure 1. Population distribution of Canada - Indigenous and non-Indigenous.**

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<sup>3</sup> Aboriginal Affairs and Northern Development Canada website “Aboriginal Demographics from the 2011 National Household Survey” (numbers are rounded): <http://www.aadncaandc.gc.ca/eng/1370438978311/1370439050610>.

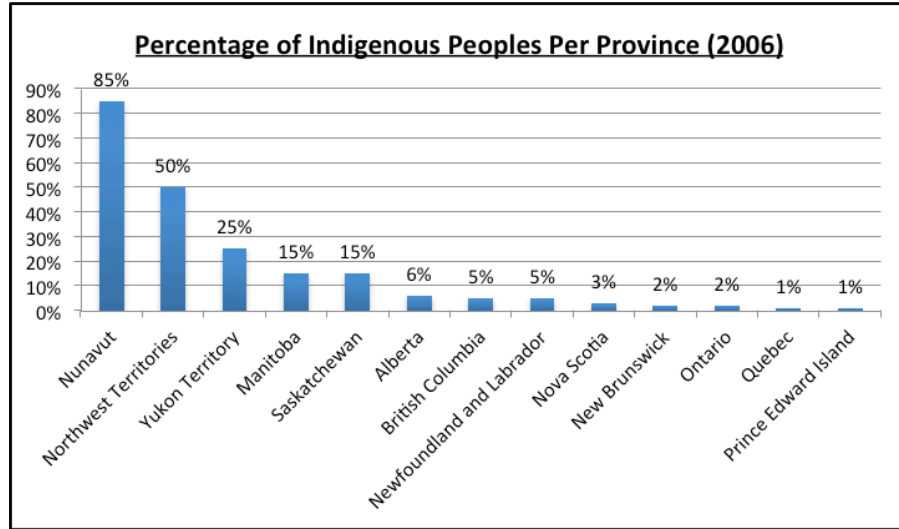


These numbers, however, do not include Indigenous Peoples who reside in Canada but are from other parts of the world, as Canada’s definition of “Indigenous” is restrictive. A Maya from Mexico or Guatemala, and his or her descendants who identify as Indigenous, count in the U.S. census (and would be advised to count themselves as) “Indigenous” or “Native American” for the census, whereas in Canada, this is not the case. It is also important to note that the percentage of the population that is Indigenous differs depending on locale. For instance, in the northern and western Provinces and Territories, the percentage of Indigenous Peoples is much higher compared to the Provinces in central and eastern Canada (see Figure 2).<sup>4</sup>

**Figure 2. Percentage of Indigenous Peoples per Province/Territory.**

<sup>4</sup> Information retrieved from Statistics Canada. Found at: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/figures/c1-eng.cfm>.





**Socioeconomic Situation.** James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, observed the situation of Indigenous rights in Canada in October 2013, three years after Canada officially endorsed the UNDRIP, and found the disparities between the Aboriginal and non-Aboriginal populations to be pervasive and at a “crisis” level (Anaya, 2014). Indigenous Peoples in Canada fare worse on almost every scale of wellbeing and socioeconomic indicator compared to the non-Aboriginal population.

**Poverty.** The economic situation of the Indigenous Peoples in Canada is far worse than that of the wider Canadian population. Aboriginal people face disproportionately higher levels of unemployment and low-paying jobs and disproportionately lower levels of economic opportunity. The 2011 National Household Survey reveals tremendous differences in unemployment rates between Aboriginal and non-Aboriginal Canadians. The unemployment rates of First Nations, Inuit, and Métis were all significantly higher, on reserve and off, than the non-Aboriginal unemployment rates. Overall, the unemployment rate for the working age Aboriginal population was 13%, more than double that of non-Aboriginal Canadians, which was 6% (Department of Aboriginal Affairs and Northern Development Canada, 2011). The disparity of unemployment rates becomes more extreme when looking at particular Aboriginal groups and

between on-reserve and off-reserve rates. The highest overall rate of unemployment was Status First Nations living on reserves (22%), with regions such as the Yukon and New Brunswick having the highest rates at 25% and 24%, respectively (Department of Aboriginal Affairs and Northern Development Canada, 2011). The next highest rates were exhibited by Status First Nations living off reserve (17%) and Inuit (17%), though in certain regions such as Newfoundland and Labrador, the Northwest Territories, and Nunavut, unemployment rates for Inuit were higher at 22%, 21%, and 21%, respectively (Department of Aboriginal Affairs and Northern Development Canada, 2011). While still higher than the average unemployment rate for non-Aboriginal Canadians, the disproportionality of unemployment rates for Métis (8% in urban regions and 10% in rural regions) were not quite as extreme as seen with the First Nations and Inuit (Department of Aboriginal Affairs and Northern Development Canada, 2011). These numbers are astounding, and yet, because the Federal government does not gather unemployment statistics on First Nations reserves the rates of unemployment on many reserves are projected to be even higher (Friesen, 2015).

**Health.** The Indigenous Peoples in Canada exhibit disproportionately higher levels of physiological and psychological ailments and diseases than the non-Indigenous population. Such disparities are seen with physical conditions such as heart disease and diabetes psychological disorders such as addictions and suicidality to name but a few. Additionally, mortality rates are significantly higher for Indigenous Peoples in Canada than they are for the non-Indigenous population. Another important area that has been highlighted by the UN Special Rapporteur is the exceedingly high suicide rates amongst Aboriginal youth. Whereas the life expectancy rates for non-Indigenous males and females in 2000 were 77 years of age and 82.1 years of age respectively, the life expectancy for registered First Nations peoples was estimated to be at 68.9

and 76.6 years of age for males and females respectively (United Nations, 2009). Perhaps even more startling is the fact that the rate of premature mortality (death before 75 due to suicide or unintentional injury) is “almost four-and-a-half times higher” for Indigenous Peoples in Canada than the non-Indigenous population (United Nations, 2009). These statistics are rather dated; however, the disproportionality of illness in the Aboriginal population has not been improved since and recent states of emergency in Indigenous communities have been issued related to spikes in youth suicide (Neskantaga First Nation and Attawapiskat First Nation being two such examples), so we can be confident that these numbers are applicable to the contemporary context (Porter, 2016; Rutherford, 2016).

**Housing.** Of the many factors that contribute to the aforementioned disproportional health impairments that the Indigenous Peoples in Canada face include the despicable state of their housing. Not only are Indigenous Peoples houses far more likely to be in need of major repairs, there is also a severe shortage of housing and therefore overcrowding abounds, exacerbating the issues of the social, physiological, and psychological health issues (Anaya, 2014; Canadian Human Rights Commission, 2013). Further, many Indigenous Peoples in Canada experience restricted access to clean, running water and electricity in their houses (Anaya, 2014; Barker, 2012; McGregor, 2014).

**Water.** As of January 2015, 1,838 drinking water advisories (DWAs) were in effect across Canada, of which, 169 DWAs were in 126 First Nations communities (Council of Canadians, 2015). Health Canada (2016) reports that as of March 31, 2016 there were 133 DWAs in effect in 89 First Nations communities across Canada, not including British Columbia. The First Nations Health Authority (2016), which has been responsible for reporting DWAs since 2013, asserts that as of March 31, 2016 there were 26 DWAs in 23 First Nations in British

Columbia. These numbers combined, as of March 31, 2016, include 159 DWAs in effect in 112 First Nations communities across Canada. The severity of the situation is highlighted when looking at the disproportionate distribution of DWAs in First Nations communities. For instance, Levasseur and Marcoux (2015) reported that, between the 2004 and 2014, 400 out of the 618 First Nations in Canada—nearly two-thirds—experienced water problems. A report by the Council of Canadians (2015) asserts that the “provincial and territorial advisories are issued for different locales including municipal water systems, towns, apartment buildings, schools, parks, campgrounds, stores and restaurants” while “[t]he the majority of advisories in First Nations communities were for public or semi-public water systems...” (p. 6).

**Education.** Education is another area where deep-rooted inequities exist. Completion rates in all levels of education are drastically disproportionate, with Aboriginal People having much lower rates of educational attainment than the non-Aboriginal population. According to the Royal Commission on Aboriginal Peoples, about 70% of First Nations students on reserve do not complete high school. Further, whereas 46% of non-Indigenous Canadians between 15 and 44 years of age hold a post-secondary certificate, diploma or degree, only 27% of First Nations peoples of the same age hold such accreditation (United Nations, 2009). Inadequate funding for primary and secondary school on reserves contributes to lower completion rates and poorer quality of education. According to Blackstock (2010) “Estimates are that federal funding for elementary schools on reserves falls short by 40%, and the problem is even worse in secondary schools where the federal government spends 70% less on First Nations students than they do for other children” (p. 3). With the recent change in the Prime Minister’s Office, Prime Minister Justin Trudeau has promised to address this funding disparity and provide more funding to First Nations communities for primary and secondary education (Barrera, 2016). However, with the

release of the 2016 Budget, much of the \$2.6 billion dollar figure for education is being withheld for distribution only if the Trudeau government achieves re-election in 2019 (Barrera, 2016). Over half of the promised amount—\$1.4 billion—has been back-ended for distribution in 2019 and 2020 (Barrera, 2016).

**Food Security.** Food security is another realm in which Aboriginal people in Canada experience drastic deprivation relative to the non-Aboriginal population, especially for Aboriginal people in remote and northern communities. Mikkonen and Raphael (2010) and HungerCount (2011) illustrate the phenomenon of food insecurity in Canada and show that Aboriginal people in Canada are more likely than non-Aboriginal people to be food insecure. The Council of Canadian Academies' Expert Panel on the State of Knowledge of Food Security in Northern Canada cite the 2007-2008 International Polar Year Inuit Health Survey, stating that "...44.2% of Inuit households in Nunatsiavut, 46.0% in the Inuvialuit Settlement Region (ISR), and 70.2% in Nunavut experienced moderate to severe food insecurity" (p. 4). While to a lesser degree, Food insecurity is still a significant issue for urban Aboriginal households (Expert Panel on the State of Knowledge of Food Security in Northern Canada, 2014). For example, the Canadian Community Health Survey (CCHS) (2011) estimates that the rate of food insecurity in urban Aboriginal households across Canada (27%) is more than twice that of non-Aboriginal households (Tarasuk et al., 2013).

**Women's rights.** The situation of Indigenous women is another critical piece to acknowledge when looking at the socio-economic situation of Aboriginal people in Canada. Due to the institutionalization of a settler colonial state, the violent system of capitalism and patriarchy has been imposed upon Indigenous Peoples; as such, with the intersections of being a women and Indigenous (plus other potential intersections, such as sexual orientation, physical

and mental ability, etc.), Indigenous women experience some of the most egregious disenfranchisement and exploitation (Gunn, 2014; Kuokkanen, 2012; Parisi & Corntassel, 2007). Indigenous women have experienced discrimination and exploitation through numerous means, including economically, legally, sexually and reproductively (Kuokkanen, 2012; Native Women's Association of Canada, 2014; Rose, 1996). One of the most critical issues is the extreme gendered violence experienced by Indigenous women in Canada. The relative proportion of Aboriginal girls and women that are victims of violent crimes far exceeds that of non-Aboriginal women (Anaya, 2014). Over the last 20 years, more than 660 cases have been documented of Aboriginal girls and women who have gone missing or been murdered (Anaya, 2014; Native Women's Association of Canada, 2014).

This brief overview of the socioeconomic situation of the Indigenous Peoples in Canada situates the proceeding discussion while also illustrating the importance of the present research by exemplifying the pervasive disparities that exist between the Indigenous and non-Indigenous populations in Canada as a result of the inequitable institutions, laws, and policies of the settler colonial state and the intergenerational trauma induced by historical and contemporary colonialism (Brave Heart, 1999; 2000; 2003; Evans-Campbell, 2008; Mitchell, 2011). The conditions of Indigenous Peoples globally reflect many of these disparities compared to the non-Indigenous populations; this is true whether in a settler colonial nation state or a post-independence country in the Third World. In the following section, I will establish the theoretical frameworks that I will be using to understand (1) how and why the current situation is so dire for Aboriginal people in Canada as well as the resistance of the Canadian government to the implementation of the UNDRIP, and (2) how this situation can be rectified.

### **Literature Review**

The style of literature review that I have opted to conduct for this Master's research is a rapid, methodologically inclusive research synthesis (MIRS). Suri and Clarke (2009) established the MIRS in order to transcend the limitations of previous review techniques, which proceeded on purist bases. As such, I did not limit the scope of my literature to empirical (and neither solely qualitative nor quantitative) or theoretical sources. Rather, the only discriminatory criteria that I employed to select my sources was the degree of importance of the source and the relevance to my research question and/or topic. Additionally, because of the scope of the Master's research project and the extensive amount of highly related literature, I have chosen to conduct a "rapid" review (Armitage & Keeble-Ramsay, 2009), thus requiring me to limit the scope of my sources.

To search for literature, I conducted numerous searches using a number of databases and journals including: Google Scholar; Scholars Portal; EBSCOhost; ProQuest; American Indian Histories and Cultures; Decolonization: Indigeneity, Education & Society; Human Rights Quarterly; and the United Nations document bank. In addition to the search for literature that I conducted in the aforementioned databases and journals, I included some texts—articles and books—that I already had from previous research with the Indigenous Rights and Social Justice (IRSJ) research group, the Laurier Office of Aboriginal Initiatives, and a number of courses that I have taken over the past two years. I also searched through the reference sections of the sources I acquired in order to identify texts that the authors cited in order to dig deeper into certain topics.

### Settler colonialism

Settler colonialism is distinct from other forms for colonization such as metropole colonialism and neo-colonialism (Barker 2012; Veracini, 2011). In a relatively new body of scholarship, the distinctness of settler colonialism has begun to be articulated in a meaningful way. Veracini (2011) provides an important contribution to the field with his article *Introducing settler colonial studies* by providing the theoretical groundwork to separate settler colonialism from the other aforementioned forms of colonialism. Beginning with a broad definition of colonialism, Veracini asserts that it is primarily defined by exogenous domination and that it has “two fundamental and necessary components: an original displacement and unequal relations. Colonisers move to a new setting *and* establish their ascendancy” (2011, p.1). An important distinction that Veracini makes between settler colonialism and other forms of colonization is the nature of the demands made of the Indigenous populations: the goal of settler colonialism is for the Indigenous populations to “go away” (whether by means of physical elimination or displacement or by erasing cultural practices through the absorption or assimilation of Indigenous populations into the wider population), whereas the goal of Metropole colonialism is to “sustain the *permanent* subordination of the colonised” in order to continually derive the benefits of the exploitation of Indigenous labour (different definitions of labour are present, including: physical, spiritual, consumption, sexual, reproductive, etc.) (2011, p. 2, emphasis in original).

Settler colonialism is both a geographical and psycho-affective process. Barker (2012) puts these two aspects into discussion, establishing the interrelated spatial and psychological aspects of settler colonialism. “*Settler colonialism*”—he asserts—“describes how settler collectives move through space, how they configure themselves in space, and how they relate to



places through various psychological techniques” (Veracini, 2010 – as cited by Barker, 2012, p. 40-41, emphasis in original). The making of Settler colonial space “describes the complex, unique dynamics between Settler and Indigenous peoples in place, showing how they navigate through intimate dynamics of race, class, violence, and discovery” (Banivanua Mar & Edmonds, 2010 – as cited by Barker, 2012, p. 41). Bridging these two frames, Barker asserts that:

[t]he spaces that settler colonisers perceive are at the core of the Settler identity; they constitute the spatiality of settler colonialism, the impact of space on identity and vice versa. These spaces are racialised, hierarchical, and filled with perceptions of right and privilege, as well as threat of loss of privilege or legitimacy. These spaces are hostile, even antithetical, to Indigeneity (Barker, 2012, p. 41).

In this, Barker describes the reality of settler colonialism as an ongoing phenomenon that is violent in nature, and “antithetical to Indigeneity”. In other words, settler colonialism—and thus the settler colonial nation state and the Settler identity—are predicated on the exploitation and detachment of Indigenous peoples from their spatial networks and place-based relationships. Such transformative processes of “settler colonial spatial production and consumption” are necessary for “settler colonial spaces and Settler spatialities” to be “rooted in their place” (Barker, 2012, p. 42).

**Indigenous Peoples’ relationship to land.** “They can put a rope around my neck but I will not move from this land” – Chief Smallboy, 1968 (cited by Cardinal, 1971, p. 1).

Of critical importance to the settler colonial critique is an understanding of Indigenous Peoples’ relationship to land. A great ontological chasm exists between Indigenous and non-Indigenous Peoples—especially in relation to perspective of and relationships with land and

natural resources. Speaking within the context of North America, most non-Indigenous people are informed by a worldview that situates humans as being above nature, where nature is seen primarily as a resource that exists for humans to exploit and benefit from (Koger & Winter, 2010). The historical roots of this conception, and in particular, the hierarchical understanding of “man” existing over nature and having the right to control nature, stem from Christianity, the emergence of scientific thought during the Enlightenment, and later, with John Locke’s (1632–1704) notion of property and individual ownership over land and the adoption of capitalism (Koger & Winter, 2010). To this day, the accumulation of material wealth—economic growth—is central to nation-states’ policies, laws, and economic strategies.

But Indigenous Peoples’ relationship to land is markedly different.

As a Settler-Canadian, I cannot speak to the experiences of Indigenous Peoples. Nor can I claim to know Indigenous cultures, despite having lived with Indigenous communities, participated in ceremonies, and having been gifted some knowledge and teachings from friends and elders. As such, in this section I do not claim to be an expert on Indigenous ontological, epistemological, and axiological stances; rather, this section will be an articulation of my interpretation of the large body of Indigenous and allied scholarship related to Indigenous Peoples’ connections to land, including the spiritual and cultural significance of land, the implications of this connection to land to the survival of Indigenous cultures, and how this is being disrupted by critical clashes of cultures exemplified by Settler resource extraction and resource development initiatives.

***Cultural and spiritual significance.*** Compared to the typical North American viewpoint, Indigenous Peoples relate to land on a much deeper level, where the relationship to land is non-hierarchical and based on the fundamental principles of respect and reciprocity. There is an

appreciation of the land as the mother that supports and sustains all living things (Mohawk, 1995). This perspective is underpinned by an ontological understanding of the world as being comprised entirely of interconnected and interdependent beings that possess spirits.

Deloria (2003) writes at length about the differences between Indigenous and non-Indigenous beliefs and religions; he asserts that Indigenous religious beliefs are place-based, whereas non-Indigenous peoples' beliefs and religions (particularly Christianity) are fundamentally founded upon the notion of history and are thus temporally based. While historical events are important to Indigenous cultures, they are coupled with, and inextricably tied to, specific geographies (i.e., sacred mountains, volcanoes, lakes, forests, etc.) (Deloria, 2003). The “place-based existence” of Indigenous Peoples and cultures has been articulated time and again by numerous Indigenous scholars (Alfred & Corntassel, 2005; Nelson, 2008; Simpson, 2004; Tuck & Yang, 2012; Waziyatawin, 2012).

Many other Indigenous authors provide varying perspectives on the responsibility to protect the land, informed by their traditional ontologies. Brooks (2008) (an Abenaki), for example, uses the model of the sharing of the land and its resources as a “common pot.” Borrows (2005) (an Anishinaabeg) does as well, though he claims that this concept goes back to pre-existing aboriginal treaties, such as the “bowl with one spoon” treaty between the Hodinohsonih and the Anishinaabek in 1701 (p. 179). LaDuke (1999) (an Anishinaabeg), on the other hand, connects her Indigenous knowledge to local biological and climate science. All of these perspectives expand from Deloria's single logic of a “placed based existence,” to demonstrate a multi-pronged way of guaranteeing rights to land, by connecting land to work, history, identity, law/treaty, etc.

As previously mentioned, this relationship to land is perhaps one of the elements that can be subsumed under the umbrella of the word *Indigenous*, for it transcends boundaries of Indigenous cultures across the world. For instance, in Latin America, an Indigenous alternative to mainstream development, which challenges the Western model based on economic growth, has emerged (Fatheuer, 2011; Gudynas, 2011; Monni & Pallottino, 2013; Radcliffe, 2012). Buen Vivir (“good life”) is complex and has been interpreted differently by communities that have adopted it, based on the beliefs and practices—or, in the words of Monni and Pallottino (2013), “cosmovisions”—that are particular to each Indigenous group. Yet one element that remains the same is that it privileges a perspective that is “...based on the harmonious coexistence of human beings and nature” (Monni & Pallottino, 2013, p. 11).

Fry and Mitchell (in press) found empirical support for the differences between Indigenous and non-Indigenous peoples’ ontological understanding of the human-nature relationship. Using individual interviews with six participants (three Indigenous and three non-Indigenous) between the ages of 35 and 60, Fry and Mitchell conducted a cross-cultural comparative analysis of the participants’ views of land and found the conceptualization of the relationship to land to be markedly different between the Indigenous and non-Indigenous participants in the manner discussed above. The study also highlights the fact that the Indigenous understanding of land is “subjugated in favour of Western capitalist views on land”, thus exemplifying the colonial nature of contemporary Canadian society (Fry & Mitchell, in press, p. 1).

***Implications for cultural survival.*** The notion that land is important to Indigenous Peoples in a profound way has implications on how land is treated. Ornelas (2014) asserts that it is important to include Indigenous perspectives and land ethics to consultation processes related

to any project that has the potential to harm the environment because the “belief in the sacredness of places is also tied to the preservation of their culture and heritage” (p. 11). This articulates Deloria’s assertion that Indigenous cultures and histories are inextricably tied to the land, and therefore, the destruction of the land is simultaneously the destruction of the culture of the people that inhabit the land or that inhabited the land prior to colonization.

Thomas, Mitchell, and Arseneau (2015) critique the mainstream discourse on resiliency, asserting that resilience for Indigenous communities is not about adapting to their circumstances (which would ultimately require assimilating into the settler colonial culture) but about reconnecting to their Indigeneity. The authors comment on the urgent need to protect Indigenous territories because “[o]ngoing efforts to extinguish Indigenous land rights threaten the loss of culture and the very essence of Indigenous resilience” (p. 17). Thus, the protection of land is also the protection of Indigeneity and Indigenous Peoples’ very survival. This claim is supported by a foundation of research that shows that, for Aboriginals, culture is a major social determinant of health, and the destruction and disconnection from culture and land is associated with negative consequences for their physical, spiritual, mental, and emotional wellbeing and has spawned a focus on *re-indigenization* (Adelson, 2005; Chandler & Lalonde, 1998; Kirmayer, Brass & Tait, 2000; Nelson, 2008; Reading & Wien, 2009; Richmond & Ross, 2009; United Nations, 2009).

Cardinal (1971) highlights the significance of land and sacred places for Indigenous Peoples in his opinion piece in the Mohawk newspaper *Akwesasne Notes*:

Chief Smallboy and his group of people are my tie with reality—a reality based on spirituality, humanity and natural law devised by the Creator of all living beings on this earth. I share this view with many people of Indian ancestry. To deny [...] ourselves the freedom to exercise our undeniable right to a religion of our choice, deny us the right to

be what we are as a people, is an infringement upon our human rights and fundamental freedoms. If not guaranteed by man, these rights are guaranteed by our Creator (Akwesasne Notes, 1971, p. 1).

Cardinal is discussing the plight of Chief Smallboy against the proposed Alberta legislation that would prevent anyone, including Indigenous People, from occupying lands for durations longer than 30 days without a permit or license. He asserts that preventing Indigenous Peoples from being on the land equates to, not only a violation of human rights, but the preclusion of Indigenous Peoples from being who they are as a Peoples (Akwesasne Notes, 1971). Thus, preventing Indigenous Peoples from accessing their lands—whether by forced removal or through the destruction of lands and exploitation of resources for economic gain—can be rationalized as genocide and a grave violation of human rights (Alfred & Corntassel, 2005; Hall, 2012; Romanow, 2013).

### **Decolonization Framework**

Decolonization, which sets out to change the order of the world, is, obviously, a program of complete disorder. But it cannot come as a result of magical practices, nor of a natural shock, nor of a friendly understanding. Decolonization, as we know, is a historical process: that is to say it cannot be understood, it cannot become intelligible nor clear to itself except in the exact measure that we can discern the movements which give it historical form and content (Fanon, 1963, p. 36).

For centuries, communities—both Indigenous and non-Indigenous—have claimed to have striven to ameliorate the situation of Indigenous people in Canada and globally, often through programs that Indigenous people themselves might claim were “assimilationist” or unilaterally chosen as compensatory. Yet what has been shown time and again is the fact that

unless Indigenous communities are able to assert self-determination over their own cultural, spiritual, economic, and political affairs, they will continue to be denied equality, justice, and wellbeing. Consequently, the necessary remedy for the impacts of settler colonialism is decolonization.

Decolonization is an extremely complex, dynamic process that applies to numerous interrelated domains on the individual, collective/social, and structural levels for both Indigenous Peoples and Settlers alike—albeit in very different ways. As demonstrated by the quote by Franz Fanon (1963) above, the complexity—and messiness—of decolonization precludes any ability to come to rationalize or theorize decolonization with any degree of completeness. Thus, the conceptualization of decolonization for this study will focus on the directionality and movements of decolonizing processes rather than attempting to articulate how to decolonize. I will be prioritizing the UN Declaration on the Rights of Indigenous Peoples as a mechanism that can contribute to the decolonization of settler colonial society. My discussion will, however, be centred on its potential as a disruptive mechanism that can accelerate processes that open up space for decolonization and the assertion of Indigenous self-determination to occur rather than as a directly decolonizing instrument.

In orienting my work within a larger decolonization framework, ethical implications arise. My research is intentionally political, taking a critical perspective on the very structures and institutions that underlie Canada as a nation state. Further, this has ethical implications with regards to my positionality as a Settler-Canadian and my relations to Indigenous Peoples. I agree with Barker (2012) that “focusing on the effects of colonization on or the potential avenues for decolonization of Indigenous societies” are an “ethically problematic and intellectually impossible task for a Settler person to presume to undertake” (p. 32). With that said, it does not

mean that Settlers are to be relieved of the responsibility to contribute to changing the situation; rather, it means that the role of Settlers is to focus on critiquing and challenging the structures of settler colonial society from which they benefit. In other words, Settlers have a responsibility to contribute to “Settler decolonization” wherein we contribute to “reconfigurations of space that allow for the coexistence of Indigenous and Settler peoples in place” and the promotion of a “just and mutually beneficial set of relationships for both groups” (Barker, 2012, p. 32).

Numerous scholars and activists have articulated visions and avenues for decolonization, and these explanations illuminate the vastness of the domains within which decolonization must occur. The writings on decolonization describe processes on all levels of Bronfenbrenner’s (1977) ecological model: individual (micro), collective/social (meso), and structural (macro).

**Individual level (micro).** Individuals—both Indigenous and Settler—are internally colonized. Our socialization into the systems influences our behaviours, attitudes, and perceptions. In order for decolonization to occur, individuals must unlearn the systems of colonization that regulate their thoughts and behaviours; this is also referred to as *reindigenization* when applied to Indigenous individuals and populations (Absolon, 2011; Nelson, 2008; Sheridan & Longboat, 2014; Simpson, 2011). Alfred and Corntassel (2005) assert that decolonization involves “...shifts in thinking and action that emanate from recommitments and reorientations at the level of the self that, over time and through proper organization, manifest as broad social and political movements to challenge state agendas and authorities” (p. 611). This, situated within the ecological model articulates the fact that individual level change permeates out into the collective/social level to create structural change.

**Collective/social level (meso).** Fostered by bottom-up and top-down processes, collective/social transformation can occur. The decolonization of collectives occurs when



individuals take steps to promote internal, individual level transformation and then come together (Alfred & Cornassel, 2005; Nelson, 2008). Additionally, collective transformation can come from structural transformation, when the institutional norms prescribe new behaviours and attitudes that ought to be followed (Gordon & Berkovitch, 2007; Risse et. al, 1999; Romanow, 2010). Again, due to the multidirectional nature of decolonizing processes, collective/social transformation is not just the end product; rather, collective/social transformation affects change within the individual and structural levels.

**Structural level (macro).** Structural change is necessary for the decolonization of institutions, laws, and policies. As previously discussed, decolonization efforts typically stem from the individual level and transcend into collective action and social transformation, which then asserts pressure on the states. This results in the overthrowing of the state or a dramatic shift in state structures, policies, and institutions. One of the most important pieces of structural transformation for settler decolonization is the renegotiation of land and space. This, which requires the repatriation of territory to Indigenous Peoples, Tuck and Yang (2012) assert to be the most fundamental component of decolonization. This is particularly the case because, as demonstrated earlier, the survival of Indigenous Peoples and their cultures is inextricably tied to their land. Another aspect of structural transformation for decolonization is the indigenization of institutions. Just as there is a need for individuals to expunge the colonial norms that are so deeply engrained within us, there is a need for such a process within societal structures and institutions (Cote-Meek, 2014; Sheridan & Longboat, 2014; Smith, 2001).

### **Implementation of international human rights norms**

In order to explain how my study will add to this pressure, as well as to further situate my work within this decolonization framework, it is necessary to understand how international human rights norms are implemented at the state level.

**The Spiral Model of human rights change.** International norms represent shared understandings of certain standards for behaviour which are “...the product of interaction among social groups (states, NGOs, activists, academics) at the international level and represent their intention to conform to some social practice” (Risse et al., 1999, p. 7 – as cited by Romanow, 2010, p. 7). Brysk (1993) notes the complementary role of national and international factors for contributing to social change, asserting that, “the relationship between civil society and the state is mediated by the international system” (p. 260). Risse et al.’s (1999) Spiral Model of human rights change builds on Brysk’s (1993) idea of simultaneous pressure from above and below and provides a framework for how human rights norms are internalized by states (Romanow, 2010). The Spiral Model outlines the evolution of state action, from outright repression of human rights to norm consistent behavior, and the mechanisms “that move human rights norms forward on the domestic agenda and ultimately enable its incorporation within domestic practice” (Romanow, 2010, p. 39).

Pressures from domestic civil society (pressure from below) work in tandem with the transnational advocacy networks (pressure from above) in order to push states through the five stages of state behaviour identified in the Spiral Model: states move from human rights repression, to denial, towards tactical concessions, prescriptive status, and finally, rule-consistent behaviour (Risse, et al., 1999; Romanow, 2010). As is the case in the decolonization model, domestic civil society and transnational advocacy networks are mutually reinforcing and contribute to the strengthening of each position; however, with the presence of only the pressure

from domestic civil society or the transnational advocacy network without the other, the state can dismiss the pressure (Romanow, 2010). Gordon and Berkovitch (2007) discuss this dynamic in their study of human rights discourse in Israel-Palestine in the latter part of the 20<sup>th</sup> century. Their discourse analysis reveals the interplay between domestic events (efforts of resistance by the occupied Palestinians) and the efforts of transnational human rights organizations (Gordon & Berkovitch, 2007). The authors assert the need for pressure from both above and below in order to change domestic norms; however, they also discuss the complexities of this interaction, especially when confronted by resistance efforts from the state as well as when other world events occur that serve as distractions.

**Implementation of the UNDRIP.** A shortcoming of the Spiral Model is the fact that one of the central elements to the *socialization* of states into implementing international human rights norms is the presence of the states from the Global North. These countries are presented as having a pivotal role in the process as they can threaten and apply political and economic sanctions against the rights-violating states (Risse et al., 1999). This poses a problem for the application of this model for explaining the mechanisms that will contribute to forcing states to comply to the UNDRIP as many of the states in the Global North, including Canada, are settler colonial states, and thus, are some of the most egregious violators of Indigenous Peoples' rights (Veracini, 2010, 2011). This leads to the question of whether this framework is applicable in the context of Indigenous rights in Canada. Due to the primacy of the international and domestic pressures working in tandem, and given the mutually influencing, multilevel decolonization model, I would assert that it is. Although change may take time, even incremental shifts will compound to eventually apply enough pressure to compel the Canadian government to comply. Many Indigenous scholars and communities across Canada have already begun to uptake the

UNDRIP and demand the implementation by the Government, as evidenced by the Idle No More movement that was sparked into existence in 2012 (Ornelas, 2014; Gilio-Whitaker, 2015). But in order for those pressures to be asserted, the domestic civil society and transnational advocacy networks need as many tools as they can get to raise awareness of the lack of implementation and the occurrence of rights violations.

**Feedback and norm compliance.** One tool that can be used to generate awareness and to elicit various actors to apply pressure to compel nation-states to change in accordance to the human rights norms is feedback. Feedback has been used to inform and instigate behavioural and systems change in various sectors, including health care (Lambert, Hansen, & Finch, 2001), mental health (Bickman, 2008; Kelly, Bickman, & Norwood, 2009; Riemer & Bickman, 2011), organizational and manufacturing (Ilgen & Fisher, 1979; Taylor, Fischer, & Ilgen, 1984). A particularly useful method of feedback is ‘negative feedback,’ where cognitive dissonance is created by exposing gaps between the commitments individual, organization/business, community, or governments make and their actual behaviours (Riemer & Bickman, 2011). Monitoring States’ compliance to their human rights commitments is an important means for exposing where the gaps between the ideal and the reality lie—and publically exposing these gaps can provide the impetus to make change by eliciting a sense of dissonance (within individuals or at a collective level) and/or tarnishing/threatening a public reputation (Riemer & Bickman, 2011). This discrepancy, according to control theory, “...can trigger various reactions, including (a) increased effort to reduce or eliminate the gap to alter future feedback; (b) efforts to change the standard; and (c) rejection of the standard, among others” (Guerra-López & Hutchinson, 2013, p. 163).

This brings the discussion back to my study.

One reason that there is a gap in the implementation of the UNDRIP is that there is a lack of governance mechanisms to monitor the implementation of the UNDRIP internationally and domestically. Such monitoring is necessary as it contributes to the pressuring of those states that “underperform” to conform to the rights norms by means of accountability measures and public “shaming” (Kelley & Simmons, 2015). This is particularly important when states value their international reputation and image, which is certainly the case in this era of globalization and international market interconnectedness that we currently find ourselves in (Romanow, 2010). Additionally, while the United Nations Special Rapporteur on the Rights of Indigenous Peoples already monitors the ‘performance’ of States on their compliance to the UNDRIP, it is important to provide a quantified assessment as supplementary data and as means for triangulation. In Nutt’s (2008) comparison of the success of organizational decisions, which were based on different forms of information and data, it was found that decisions based on quantitative performance data were “significantly more successful than those decisions made on the basis of personal ‘hunches’ or feelings, or on the basis of consensus of opinions of others” (Guerra-López & Hutchinson, 2013, p. 163). This does not suggest that the two latter perspectives do not have their utility; rather, it suggests that they must be triangulated with independently verifiable performance data.

## Method

With the relevant literature laid out, the context brought to the fore, and the purpose of this research project identified, it is now time to turn to the methods of the study. In this chapter, I begin by stating my research questions and then I establish the paradigm within which this research is grounded and how this research relates to the field of Community Psychology. Once these elements have been laid out—which significantly influence my approach to answering the research questions—I provide an overview of the methods I used for data collection and analysis.

### Research Questions

As mentioned in the previous chapter, the purpose of my study is to evaluate Canada's compliance to the rights standards set out in the UNDRIP in order to set a baseline for subsequent evaluations to be compared in order to track the implementation—or lack thereof—of the UNDRIP into domestic policy, law, and institutions and to garner leverage to hold the government accountable to its commitment as a signatory state of the UNDRIP.

Due to the breadth of Indigenous rights, I decided to narrow the scope of the data and limit the study to only those rights that are most important for Indigenous Peoples' ability to assert their right to self-determination and to guarantee their survival as Peoples. The data that I included are those that address the articles of the UNDRIP related to self-government and self-governance (Articles 3, 4, 5, and 20), consultation and free, prior, and informed consent (FPIC) (Articles 18 and 19), and land and natural resources (Articles 26, 27, 28, 29, and 32).

My evaluation attempts to address the following research questions:

1. How do Canada's laws, policies, and practices, as indicated by Anaya's (2014) Canada report, comply with the standards set out in the UNDRIP in the articles related to...
  - a. Consultation and Free, Prior, and Informed Consent (FPIC)?

- b. Self-governance and self-government?
- c. Land and natural resource rights?

### **Paradigm**

The paradigm that I have chosen to inform my research is the critical-ideological paradigm. The ontological and axiological standpoints of the paradigm are well aligned with my research and with the goals and orientation of community psychology. First and foremost, what brings me to using the critical-ideological paradigm is that the epistemological function is to be a form of cultural or social criticism (Mertens, 2009; Ponterotto, 2005). Given the theoretical frames of settler colonialism and the spiral change theory of human rights that I am utilizing, this research is contributing to a growing discourse on the oppressive nature of the Canadian nation state. As such, this research is highly political in nature, with the aim being to investigate the gap between Canada's commitments and state policy and actions providing an empirically based metric to inform mounting pressures for the State to take actions to comply to the UNDRIP and respect Aboriginal peoples' rights.

Further, the ontological stance of the paradigm holds that "reality is shaped by ethnic, cultural, gender, social, and political values" and that they are "mediated by power relations that are socially and historically constituted" (Ponterotto, 2005, p. 130). This aligns with the understanding of settler colonialism that I am using in this research to explain the situation of socio-economic, and political situation of Aboriginal people in Canada as well as the implementation of the UNDRIP into the domestic sphere.

### **Connection to Community Psychology**

Community psychology (CP) is an interdisciplinary field that holds social justice, transformative social change, respect for diversity, and human rights as central guiding principles

and values. Community psychologists strives to gain a wholistic understanding of social and cultural phenomena by applying the ecological model originally established by Bronfenbrenner (1977), which looks at every aspect of life as nested within context, interconnected with, influenced by and influencing other aspects of the society (Bronfenbrenner, 1977; Trickett, 2009). While not all community psychologists focus on interventions at all levels of the ecological model, thought and attention is paid to the second order effects that an intervention will have on the other levels of analysis (Mitchell & Macleod, 2014; Nelson & Prilleltensky, 2012; Trickett, 2009).

This project aligns well with the values and principles central to community psychology. In particular, the orientation towards transformation and challenging the status quo and systems of power and oppression, which are key values of CP (Nelson & Prilleltensky, 2012), are espoused by this research. Further, CP is nested within, and is informed by, a framework of human rights, which I am explicitly hoping to advance through this research. Another aspect of this project that lends itself to CP is the fact that the research is an implementation evaluation. Community psychology deals extensively with the implementation of interventions, programs, and policies at numerous levels of analysis. While this implementation evaluation is not a specific program, it is the implementation of a policy (the intervention of internationally recognized human rights norms) at the macro-level, which has implications across all levels of the ecological model. The focus of this research is contained to the level of international policy being implemented domestically within Canada, which aligns with the role that community psychologists should play (Mitchell & MacLeod, 2014; Nelson, 2013). According to Mitchell and MacLeod (2014) assert that, “community psychologists have long understood the importance of working at a systems level given that the lives of those most disadvantaged are largely shaped



and constrained by their socio-historical and political economic contexts” (p. 112). It is particularly important for community psychologists to work critically at the policy level in order to challenge the status quo and to influence transformative change to impact the wellbeing of marginalized communities. Watzlawick, et al. (1974) defined this attention to policy and structural change with the intention of affecting change at the individual and community levels as ‘second order change’. Through this work I am hoping to contribute to decolonizing processes and accountability of Settler governments and other Settler researchers by ensuring that the United Nations Declaration on the Rights of Indigenous Peoples has teeth in the social, political, legal, and economic realms.

### **Ethics**

This project did not require formal ethics review from Wilfrid Laurier University’s Research Ethics Board (REB) because I am dealing with textual data that have already been published. No aspect of the research for this study directly involved human participants. However, the work does fit within the previously approved research program of Dr. Terry Mitchell, who has been doing work with Indigenous scholars and communities across Canada, the United States and Latin America on the internationalization of Indigenous rights related to resource and land governance. With that said, because I am dealing with information that involves the experience of Aboriginal people, I have taken explicit steps to involve Indigenous people in the reviewing of my analyses and final study document. This was done formally, through the composition of my MA Thesis Committee and by getting another Indigenous scholar to be an external reviewer. In addition to this, I have also been in informal conversation with Indigenous people about my ideas related to settler-Indigenous relations, working to support decolonization as a non-Indigenous person, and about this particular thesis since 2012. During

this time I have consulted with numerous people and have contributed to the organization of a past event on ‘allyship’ where both Indigenous and non-Indigenous community members and scholars discussed many issues relevant to this study. I feel that it is my ethical duty to ensure the involvement of Indigenous people on this project in order to ensure that my analysis and reporting of the data do not unintentionally perpetuate the colonial power relationship and serve to further disenfranchise Aboriginal people in Canada.

### **Methodology**

The methodological approach that I used in order to address the above research questions was a mixed methods evaluation utilizing a UNDRIP assessment tool. In particular, I utilized what Driscoll, Appiah-Yeboah, Salib, and Rupert (2007) describe as “transformative” mixed methods design, wherein the researcher changes “one form of data into another” (p. 20). This method is most commonly seen in “quantitizing” qualitative data; however, “qualitizing” quantitative data is also done (p. 20). For this research, I utilized the former transformative process: I collected qualitative data using content analysis and used the Laurier Indigenous Rights and Social Justice Research Group’s UNDRIP assessment tool to convert the qualitative data into a quantified score on a scale.

The quantification of qualitative data for my research study is necessary for the provision of a “compliance score” for Canada. This score will be used as a baseline for subsequent evaluations to be compared in order to monitor implementation of the UNDRIP. Additionally, this score will be used within the Indigenous Rights and Social Justice (IRSJ) Research Group’s larger project to compare Canada with other countries that have ratified the UNDRIP, whereupon the countries will be ranked according to the degree compliance.

The critical-ideological paradigm takes an epistemological stance that is pragmatic in nature, appreciating the utility of both quantitative and qualitative methods (or a mixture thereof), as long as the methods lead to transformative change (Mertens, 2003, 2007, 2009). Due to the fact that I am utilizing a form of mixed methods (using qualitative data and transforming them into quantitative scores), coupled with the fact that this research is being driven by an anti-colonial agenda, this paradigm aligns with this study and the methods that I have chosen to employ.

### **Procedure**

In order to conduct the evaluation of Canada's compliance of the rights standards established in the UNDRIP I conducted a critical content analysis, informed by the methodological specifications of the IRSJ UNDRIP assessment tool. In order to adhere to the methodological specifications of the IRSJ UNDRIP assessment tool, I conducted a deductive content analysis, whereby I translated the textual data from Anaya's (2014) Canada report document into quantified scores for each of the articles of the UNDRIP.

My initial conceptualization of this project far exceeded the scope of a Master's research. Rather, it would have been more appropriate for a PhD dissertation. Originally, my selection criterion for the data was far too broad and included laws, policies, industry reports, media reports, statistics from Statistics Canada, and academic articles. Due to the sheer number of documents that this inclusion criteria would require me to read and analyze, I have, through consultation with Dr. Geoffrey Nelson and my supervisor, Dr. Terry Mitchell, decided to narrow my data to the report published by United Nations Special Rapporteur on the Rights of Indigenous Peoples (UNSRIP), James Anaya, in May 2014 on the situation of the rights of Indigenous Peoples in Canada. On his visit to Canada from 7 to 15 October 2013, Anaya

travelled to six provinces across the country (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Québec) where he met with numerous Indigenous communities, Traditional Councils, Band Councils, and non-Indigenous politicians and diplomats (Anaya, 2013). These conversations served as qualitative data to inform his conclusions about the situation of Indigenous Peoples in Canada. Anaya also analyzed data from Statistics Canada, as well as the laws, policies, and institutional mechanisms in Canada that are relevant to FMNI.

The Anaya (2014) report is 26 pages in length and is structured into five sections: introduction; Background and context; legal, institutional, and policy framework; principle human rights concerns; and conclusions and recommendations. The bulk of the report is dedicated to the principle human rights concerns, which is divided into five theme areas: (1) social and economic situation; (2) administration of justice; (3) self-government and participation; (4) the treaty and other claims processes; and (5) Indigenous participation in economic development. The report is available for free online at <http://unsr.jamesanaya.org/list/country-reports>.

The methodological tool that we have developed to assess the situation of Indigenous Peoples in each country and region is based on the ideal standards in which Indigenous Peoples should live and enjoy their rights. In order to construct this monitoring tool, we have taken an indicator approach, which has been utilized by numerous subsidiary bodies within the United Nations Human Rights body (Fukuda-Parr, 2006; United Nations General Assembly, 2001; Welling, 2008). These standards that we are using to inform the indicators for the tool are the particular rights articulated in the United Nations Declaration on the Rights of Indigenous Peoples.

While I utilized the tool to evaluate the implementation of the UNDRIP into Canada, the Indigenous Rights and Social Justice research group developed the metric with the intention of making regional and international comparisons of the situation of Indigenous Peoples in each country regarding compliance to the UNDRIP in order to establish a ranking of countries. The purpose of constructing this tool was also to set a baseline compliance score, to which subsequent evaluations can be compared. This will enable progress of the implementation of the UNDRIP to be tracked over time.

As previously mentioned, I focused my analysis on the following three thematic areas: self-governance and self-government, consultation and free, prior, and informed consent (FPIC), and land and natural resource rights. As such, in order to utilize this assessment instrument, I identified the applicable articles of the UNDRIP that are related to these specific themes.

The evaluation metric consists of four designations ranging from 0 – 3 with the higher scores reflecting an increased level of compliance to the UNDRIP. Awareness of the UNDRIP is not a requirement for a high score; however, knowing about it would be helpful as awareness would help provide direction to states as to which rights should be addressed.

A general provision of what each designation entails is as follows:

**0 An absence of compliance of the UNDRIP:**

- Active violation of Indigenous Peoples' rights

**1 Limited compliance/beginning of uptake:**

- Some efforts are made by the government and/or third party actors in order to comply with the Declaration
- The efforts do not have a specific approach on Indigenous Peoples

- No domestic laws are in place to enforce or reinforce the implementation of the UNDRIP

## **2 Partial compliance/evidence of gradual implementation:**

- State has made efforts to address Indigenous issues
- State has legal frameworks related Indigenous rights but they do not comply with the standards set by the UNDRIP
- Existing legal frameworks and Indigenous rights mechanisms are not employed in practice

## **3 Full compliance of UNDRIP:**

- State has well-developed domestic legal frameworks that comply with international standards for the particular rights
- Legal frameworks and Indigenous rights mechanisms are employed in practice
- State demonstrates appropriate levels of partnership working in good faith with Indigenous Peoples towards the protection and exercising of their rights

In order to analyze the data based on this scale, we established specific indicators for the main and sub-themes that I have identified above (see tables 1, 2, 3, 4, and 5).

**Table 1. Self-government and self-governance indicators.**

- |   |
|---|
| <p><b>0</b> Indigenous Peoples' self-determination is not exercised. Indigenous governments are not legally recognized. The government is in charge of defining and developing programs related to socioeconomic and cultural issues without the participation of the Indigenous Peoples they affect. Overall, Indigenous Peoples lack political representation.</p> <p><b>1</b> Some Indigenous communities have been recognized by the government and have started strengthening their traditional structures. However, the government is in charge of defining and developing programs that affect Indigenous Peoples. The state has made efforts to incorporate Indigenous perspectives but participation is limited. Programs in place are executed by government institutions and—in the most cases—have inadequate funding and staff.</p> <p><b>2</b> Indigenous Peoples enjoy self-government and self-governance rights in their territories and are responsible for designing their own programs related to their socioeconomic and cultural affairs. Indigenous Peoples participate in the political life of the state through their own representatives. However, the government intervenes in matters that are exclusively related to Indigenous peoples or do not respect their decisions. Indigenous governments and institutions are inadequately funded by the state.</p> <p><b>3</b> Indigenous Peoples enjoy self-government and self-governance rights in their traditional territories, design their own programs related to their socioeconomic and cultural affairs, and fully participate in the political life of the state through their own representatives. All decisions made by the Indigenous Peoples are respected by the state and are incorporated into decision-making. Indigenous governments and institutions are adequately funded. The funding is administrated by the Indigenous governments without intervention or conditions imposed on the funds by the state.</p> <p><b>D/K</b> There is insufficient information provided in the report. Do not know.</p> |
|---|

**Table 2. Consultation and free, prior and informed consent indicators.**

<p><b>0</b> No legal mechanisms exist to consult Indigenous Peoples in decision making in matters that affect them.</p> <p><b>1</b> The government tries to incorporate Indigenous Peoples concerns through dialogue. These mechanisms are not permanent and do not constitute a formal consultation process. The right to consultation has not been incorporate into domestic law.</p> <p><b>2</b> Governments have implemented a consultation process. Even though the consultation mechanism is regulated through domestic laws, the standards of the laws do not adequately meet the standards set by international documents.</p> <p><b>3</b> The government, in cooperation with Indigenous Peoples, has defined a mechanism for consultation in order to obtain their free, prior and informed consent. This consultation process has been incorporated into domestic law and complies with the international standards.</p> <p><b>D/K</b> There is insufficient information provided in the report. Do not know.</p>
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**Table 3. Duty to consult indicators.**

<p><b>0</b> In general terms, the state never consults Indigenous People in matters that can affect them.</p> <p><b>1</b> Indigenous Peoples participate in some processes of decision-making through institutions that do not respect their traditional representation. The state has not developed a special mechanism designed for consulting with Indigenous Peoples.</p> <p><b>2</b> Indigenous Peoples participate in decision-making through their traditional authorities. The consultation processes have been incorporated into domestic law but sometimes do not fulfill international standards for consultation.</p> <p><b>3</b> Indigenous Peoples, through their traditional authorities, participate in all decision-making in matters that can affect them. The consultation processes have been defined in cooperation with Indigenous Peoples and meet all of the international standards. In the case of extractive projects, this consultation takes place before starting a project.</p> <p><b>D/K</b> There is insufficient information provided in the report. Do not know.</p>
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**Table 4. Land and natural resources: Access to land and natural resources indicators.**

- 0** Indigenous Peoples lack adequate access to their traditional lands and their right to the land is not legally recognized. There are no specific programs to address this issue and governments do not recognize lands that were traditionally occupied by Indigenous Peoples. There is no compensation or redress when Indigenous Peoples' lands are confiscated. In addition, Indigenous peoples do not have the faculty to fully control or develop their lands and resources and struggle with issues such as invasion and illegal occupation among others.
- 1** Indigenous Peoples lack adequate access to their traditional lands. The government has developed strategies focused on land delimitation and legal recognition of land but there is no specific approach to Indigenous Peoples and lands that were traditionally occupied. There are mechanisms in place for redress and compensation but these mechanisms do not have a specific approach to dealing with Indigenous Peoples claims. In addition, even though the government has made efforts to address issues related to invasion, illegal occupation, and other issues, these actions are not effective. Indigenous Peoples do not control or develop their lands and resources.
- 2** There is a well-defined mechanism, developed in cooperation with Indigenous Peoples, to grant legal recognition of lands including those that were traditionally occupied. In some cases the process is slow and during the process Indigenous Peoples struggle with issues such as the invasion and illegal occupation of their lands, among others. When the lands cannot be restored, there is compensation or redress but sometimes these measures do not fulfill Indigenous Peoples' cultural needs or are not fair. Even though Indigenous Peoples have control of their lands they only partially control the resources on their lands.
- 3** There is a well-defined mechanism, developed in cooperation with Indigenous Peoples, to grant legal recognition of lands including those that were traditionally occupied. This process is fair and effective. Issues related to invasion and illegal occupation are resolved in an effective manner and, when the lands cannot be restored, the government applies adequate measures to compensate and redress Indigenous Peoples. Indigenous peoples have full access and control of their lands and natural resources.
- D/K** There is insufficient information provided in the report. Do not know.

**Table 5. Land and natural resources: Environmental protection, restitution, redress and consultation regarding extractive policies indicators.**

<p><b>0</b> The state has not developed any programs or measures to preserve and protect the environment. The government does not have any mechanisms in place to mitigate secondary effects in Indigenous communities caused by the approval of development projects or resource extraction. Indigenous Peoples do not participate in defining the strategies for managing and developing their lands and the state does not take into account Indigenous Peoples concerns. There is no consultation.</p> <p><b>1</b> The State has developed programs to preserve and protect the environment but these programs do not have a specific approach to dealing with Indigenous Peoples and their lands. In some cases the government has carried out activities to mitigate secondary effects in Indigenous communities caused by development projects or resource extraction but there are no permanent mechanisms in place to remediate these effects. The government has started to engage in dialogue with Indigenous Peoples to address their concerns but these efforts do not constitute a consultation process itself and, in some cases, this process is only carried out after a project or activity has already been initiated. In general, Indigenous Peoples do not participate in defining the strategies for managing and developing their lands.</p> <p><b>2</b> The state has designed mechanisms to preserve and protect the environment with a specific approach to dealing with Indigenous Peoples and their lands. The state has designed mechanism to mitigate secondary effects in Indigenous communities caused by development projects and resource extraction activities in their territories. However, these mechanisms lack proper funding and full implementation. The government consults with Indigenous Peoples and has incorporated and regulated this process through domestic law but, in some occasions, this consultation process does not meet international standards. Indigenous peoples have some participation in defining the strategies for managing and developing their lands.</p> <p><b>3</b> The state has adequate mechanisms to preserve and protect the environment with a specific approach to Indigenous Peoples and their lands. The state has developed and put in place adequate mechanisms to mitigate secondary effects in Indigenous communities caused by development projects and resource extraction activities in their territories. The government consults with Indigenous Peoples in order to obtain their free, prior and informed consent before approving any development project or resource extraction activity that can affect Indigenous Peoples. These processes have been incorporated into domestic law and comply with the international standards.</p> <p><b>D/K</b> There is insufficient information provided in the report. Do not know.</p>
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**Coding and analysis.** When reading through Anaya's (2014) Canada Report, I began by coding the content based on the UNDRIP Articles they related to. As can be seen in the data

metrics in the Appendix, much of the content of the report was relevant to multiple UNDRIP Articles and thus were given multiple codes. After combing through the entire report to identify which information applied to each of the articles within the purview of this study, I analyzed the quotes relevant to each of the Articles and article sub-components using the indicators above in order to help determine the score that should be assigned for each of the rights. By comparing the evidence provided in Anaya's report to the indicators, I was able to determine what score Canada should receive for each of the Articles. Rarely did all of the evidence for a particular Article clearly align with the indicators of one designation, so I assigned the score most appropriate to the general trend of the data (i.e., four out of five pieces of evidence point to a particular designation). In some cases, the evidence did not conform to the indicators of one particular designation, but could be argued one way or the other (i.e., between either a score of 0 or 1). In these cases, I defaulted to the lower score. Additionally, as a general rule established for this tool, whenever there was contradictory evidence for a particular Article (i.e., some positive examples of compliance and other examples of neglect and/or violation) the article could not be assigned a score higher than 2 out of 3.

**Reliability and validity.** In making any sort of evaluation, it is important to ensure that the tools used to conduct the evaluation are both valid (measure the phenomenon one is trying to measure) and reliable (yielding the same results with repeated application) (Padgett, 2012). One way that a tool or a measure can be construed as valid is by anchoring it to a well-established set of concepts. With this particular measure, we have anchored it in the actual articles of the United Nations Declaration on the Rights of Indigenous Peoples—a universally accepted declaration that underwent over 30 years of development. This fact lends the tool validity because the concepts that the tool operationalizes have been well defined. Reliability is another

matter. In doing a content analysis, which utilizes the qualitative rather than quantitative data, it is best to think about this in terms of *trustworthiness* (Padgett, 2012). Trustworthiness is the degree to which the process of the results of a study are grounded in the data, and the availability of the rationale and ‘decision trail’ that was used by the researcher when making the conclusions based on the data (Padgett, 2012). Trustworthiness has four components: credibility (the degree to which the researcher’s description and interpretations reflects the respondents’ views), transferability/generalizability (the applicability of the study’s findings in other contexts), auditability/dependability (whether the researcher(s) documented the procedures using a sensible logic that can be traced by others), and confirmability (degree to which the findings are linked to the data) (Padgett, 2012). A limitation to using trustworthiness in demonstrating the reliability of the methodology for a study such as this, where qualitative data is being quantified, is that it does not demonstrate the degree to which the methodology will consistently reproduce the same results when employed by different raters. While this limitation is important, I chose to utilize trustworthiness because of the limited scope and data used to inform this evaluation; a test to assess the inter-rater reliability of the UNDRIP assessment tool will be useful in the future when applied to a more comprehensive data set.

A number of approaches can contribute to making a study trustworthy. In trying to increase the confirmability as much as possible, I have modified the assessment tool to include the relevant data in a table beside each of the UNDRIP articles and their sub-components in order to make explicit which data I used in making the evaluation. This will enhance the confirmability, auditability, and credibility of the findings. In order to increase the transferability of the findings—and in particular, the UNDRIP assessment tool—I have provided a thorough description of my methodology and process for interpreting the data and arriving at specific

scores. The transferability will be particularly important for enabling Indigenous communities and Indigenous rights scholars to take up and apply the UNDRIP assessment tool themselves.

## Results

The following section articulates the results of the evaluation of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Canada, based on the quantification of UNSR James Anaya's 2014 report on the situation of Indigenous Peoples in Canada. I have organized the results according to the three thematic areas that I focused my analyses on: *consultation and free, prior, and informed consent (FPIC)*, *self-government and self-governance*, and *land and natural resources*. This section will provide an overview of the results from the analysis. I have provided the entire analysis of each article in matrices in Appendix B.

### Consultation and Free, Prior, and Informed Consent (FPIC)

The first thematic area of the UNDRIP that I chose to analyze the implementation within Canada was '*consultation and free, prior, and informed consent (FPIC)*'. This theme was particularly important due to the fact that it lends insight into the degree to which Indigenous Peoples in Canada are able to exercise their right to self-determination by having decision-making power over all aspects of their lives, including areas related to their social, cultural, economic, political, and land and resource affairs. Two articles in the UNDRIP—articles 18 and 19—were operationalized based on using the implementation scale that I described in the previous section in order to conduct the analysis. In order to adequately analyze these articles, they were divided into their sub-components, with each sub-component evaluated using the methodology that the IRSJ research group developed. In total, this thematic area was separated into four sections, three for Article 18 and one for Article 19, each one with the evaluation potential between 0 – 3, with a total possible score of 12 points.

**Table 6. Content analysis results: Consultation and free, prior and informed consent.**

Theme I - Consultation and free, prior and informed consent
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Article Statements	Score
<b>Article 18:</b> Indigenous people have the right to participate in decision-making in matters which would affect their rights with their own representatives and through their own procedures.	
Indigenous peoples participate in decision-making in matters which would affect their rights.	1
In decision-making matters, Indigenous peoples have their own representatives chosen by themselves in accordance with their own procedures.	D/K
Indigenous peoples have the right to maintain and develop their own indigenous decision-making institutions.	D/K
<b>Article 19:</b> “The State has a duty to consult with Indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”	
The State consults and cooperates in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.	1

**Article 18: “Indigenous people have the right to participate in decision-making in matters which would affect their rights with their own representatives and through their own procedures”.**

*Article 18.1.* For the sub-component of Article 18, *Indigenous peoples participate in decision-making in matters which would affect their rights*, Canada received a score of 1 out 3. Anaya’s (2014) report clearly demonstrates the tensions that exist within Canada between the pieces of legislation within the country—such as the Article 35 of the Canadian Constitution Act (which recognizes the rights of Aboriginal people) and the Indian Act (which ultimately governs the majority of the aspects of First Nations people’s lives)—as well as with case law and the legal frameworks of the duty to consult developed through rulings by the Supreme Court of Canada and what actually happens in practice. Despite the existence of legislative affirmations of Aboriginal peoples’ rights to participate in decision-making in matters that would affect their rights, there are two main elements that impede these rights. First, Aboriginal people do not

have veto power over decisions. Second, Aboriginal communities are seldom given appropriate opportunity or time for adequate consultation, and/or they are forced to engage in burdensome processes of evaluation and evidence gathering to support their stances on a particular decision with inadequate time and resources (i.e., environmental impact assessments).

*Article 18.2.* Anaya’s (2014) report did not include sufficient data to support the evaluation of the sub-component ‘*In decision-making matters, Indigenous peoples have their own representatives chosen by themselves in accordance with their own procedures*’.

*Article 18.3.* Anaya’s (2014) report did not include sufficient data to support the evaluation of the sub-component ‘*Indigenous peoples have the right to maintain and develop their own indigenous decision-making institutions*’.

**Article 19: “The State has a duty to consult with Indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”.**

*Article 19.1.* For the sub-component of Article 19, *The State consults and cooperates in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them*, Canada received a score of 1 out 3.

As also evident in the evidence for Article 18, Canada’s score for the evaluation of Article 19 due to the implementation gap with regards to putting legislation into practice. Canada has established a legislative mechanism which affirms the rights of Indigenous Peoples to be involved in the decision-making process when legislative and administrative measure which may affect them are being proposed. However, Anaya’s report makes clear the fact that these rights are often viewed as contradictory to the interests of the Canadian State, and thus are not



respected by such means as not engaging in consultation processes, undermined through legislative changes, or made difficult by imposing barriers to engagement.

Overall, the evidence shows that while Canada is progressive in terms of enshrining Indigenous Peoples' rights legislatively speaking, the actual practice of consultation and free, prior, and informed consent (FPIC) remains woefully inadequate. The final score that Canada earned for the thematic area consultation and free, prior, and informed consent was 2 out of 6 (33.33%). The final score was reduced by six points due to the Anaya report containing insufficient evidence to support the analysis of two of the sub-components of Article 18.

### **Self-government and self-governance**

The second thematic area of the UNDRIP that I chose to analyze the implementation within Canada was '*self-government and self-governance*'. This theme was particularly important due to the fact that it lends insight into the degree to which Indigenous Peoples in Canada are able to exercise their right to self-determination by having decision-making power over all aspects of their lives, including areas related to their social, cultural, economic, political, and land and resource affairs. The applicable articles of the UNDRIP for this theme are Articles 3, 4, 5 and 20. Again, these articles were operationalized and divided into their sub-components using the implementation scale that I described in the previous section in order to conduct the analysis. In total, this thematic area was separated into nine sections, three for Article 3, and two each for Articles 4, 5, and 20, each one with the evaluation potential between 0 – 3, with a total possible score of 27 points.

**Table 7. Content analysis results: Self-government and self-governance.**

<b>Theme II - Self-government and self-governance</b>	
<b>Article Statements</b>	<b>Score</b>

<b>Article 3:</b> “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.”	
Indigenous peoples have the right to self-determination	1
Indigenous peoples freely determine their political status.	D/K
Indigenous peoples freely pursue their economic, social and cultural development.	1
<b>Article 4:</b> “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.”	
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.	1
Indigenous peoples have ways and means for financing their autonomous functions.	D/K
<b>Article 5:</b> “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.”	
Indigenous peoples have the right to maintain and strengthen their distinct political, economic, and social systems or institutions.	1
Indigenous peoples have the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.	D/K
<b>Article 20:</b> “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.”	
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.	1
Indigenous Peoples deprived of their means of subsistence and development are entitled to just and fair redress.	1

**Article 3: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.**

**Article 3.1.** For the sub-component of Article 3, '*Indigenous peoples have the right to self-determination*', Canada received a score of 1 out 3. According to the evidence in Anaya's report, the degree to which Indigenous Peoples' right to self-determination are recognized and respected in Canada is very limited. While there is legislative recognition of Aboriginal peoples' rights to culture, language, land, etc., such as within section 35 of the Canadian Constitution Act (1982), the vast majority of Aboriginal people do not actually have decision-making power over their social, cultural, economic, political, and resource-related affairs. This is evident by the continued primacy of the Indian Act, a piece of colonial legislation instituted in 1876, which governs the vast majority of First Nations people and communities, subjecting any decisions they wish to make to the approval Minister of Aboriginal Affairs and Northern Development (Anaya 2014, para 39, p. 13). Alone, this would certainly be cause to provide Canada with a score of zero; however, there are some instances that made the assignment of a 1 more appropriate. First, there have been some self-government agreements with Inuit and First Nations communities in Canada. Second, jurisprudence exists related to the duty to consult Indigenous peoples in matters that affect their rights. Thus, while the self-determination of Indigenous Peoples in Canada is extremely limited and certainly violated, as expressed with numerous examples throughout Anaya's report, this right is not universally suppressed all of the time.

**Article 3.2.** Anaya's (2014) report did not include sufficient data to support the evaluation of the sub-component '*Indigenous peoples freely determine their political status*'.

**Article 3.3.** For the sub-component of Article 3, '*Indigenous peoples freely pursue their economic, social and cultural development*', Canada received a score of 1 out 3. As mentioned earlier, the ability for Indigenous Peoples in Canada to have decision-making power over the various facets of their lives is hindered by the colonial system of dependency that was set up

through such things as the Indian Act. Indigenous Peoples are not entirely free to pursue their economic, social and cultural development due to a number of restrictions, such as the requirement of the decisions of nearly all First Nations governments being subject to the approval of the Minister of Aboriginal Affairs and Northern Development. Further, the funding packages distributed by the federal Government are “unilaterally, and some would say arbitrarily, determined” and all spending of the money is “monitored and reviewed to ensure that conditions the Government imposes are met, and funds are withheld if audits are not delivered on time” (Para 42, p. 13-14). Related to this, Anaya points out that the many First Nations communities that he spoke with felt that if they pursued business ventures that turned successful, the Government of Canada punished them by cutting their funding to the government-funded activities. This “own-source revenue” policy, Anaya says, is likely to be “phased in to all funding agreements between the federal Government and First Nations” (Para 45, p. 14).

Another critical piece described by Anaya, is the fact that the socio-economic situations on many reserves is dire and opportunities for professional development are limited. This forces First Nations peoples to leave their communities in order to pursue the requisite training to enable them to attain the skills, status, and resources to affect change in their communities. One consequence of this, Anaya points out, is the potential loss of ‘status’ of future generations if those individuals bear children with a non-status person. Due to the stipulations in the Indian Act, if this occurs for two generations in a row, the children of the third generation will no longer have the rights afforded to First Nations people with status. Membership to the Métis community is demonstrable when a person has an “ancestral connection to the community, self-identifies as a member, and is accepted as such by the community” (Para 56-57, p. 17).

Membership for the Inuit is different, as the Indian Act does not govern them; rather, and the

four incorporated Inuit organizations (Inuvialuit Regional Corporation, Nunavut Tunngavik Incorporated, Makivik Corporation, and the Nunatsiavut Government) establish their own criteria for membership, which is “generally based on ancestry and self-identification as an Inuk” (Para 56-57, p. 17).

**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 4.1.* For the sub-component of 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*’, Canada received a score of 1 out 3. As already mentioned, Anaya makes it clear that for First Nations, the Indian Act is the primary legislation in place, which governs the decisions and actions of First Nations communities. He does point out, however, that a couple of alternatives do exist: self-government agreements, which “can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected ‘inherent right’ of self-government” and the First Nations Land Management Act, which “gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems” (Para. 39, p. 13).

The Métis are not covered by the Indian Act, and have “started to engage in tripartite negotiations towards self-government agreements in key areas including, family and child care, economic development, and housing” (Para 40, p. 13). However, the institutional mechanisms

that would enable such self-governance capabilities are still a long way from being built and sustainably funded (Anaya, 2014).

Two of the four land claim agreements in the Inuit regions contain self-government provisions. The first, the Nunavut Land Claims Agreement (1999) led to the creation of Nunavut and the Nunavut government—a public government. The Nunatsiavut-Laborador Inuit Land Claims Agreement (2005) “led to the establishment of the Nunatsiavut Government, which has the powers to pass laws concerning education, health, a cultural affairs” (Para. 41, p. 13). Voters rejected the last two agreements and negotiations are still ongoing (Anaya, 2014).

Taken together, it is clear that Canada does indeed deserve a score of 1 out of 3 for this sub-component due to the fact that there are processes in place to enable self-government agreements, with a few successful agreements having already been achieved. However, on the wider scale, the number of Indigenous communities that are self-governing are far and few between.

*Article 4.2.* Anaya’s (2014) report did not include sufficient data to support the evaluation of the sub-component ‘*Indigenous peoples have ways and means for financing their autonomous functions*’.

**Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.**

*Article 5.1.* For the sub-component of Article 4, ‘*Indigenous peoples have the right to maintain and strengthen their distinct political, economic, and social systems or institutions*’, Canada received a score of 1 out 3. As already identified, the Canadian Constitution Act (1982)

guarantees the right of Indigenous Peoples in Canada, “which includes the right of indigenous peoples to govern themselves, identities, traditions, languages and institutions, and with respect to their special relationship to the land and their resources. This right of self-government includes jurisdiction over their definition of governance structures, First Nation membership, family matters, education, health, and property rights, among other subjects” (Para 9, p. 5). However, “in order to exercise this jurisdiction, agreements must be negotiated with the federal government” (Para 9, p. 5), which has resulted in every Indigenous Nation in Canada having a government that essentially functions according to externally imposed non-Indigenous rules. Communities such as the Hodinohsonih of Six Nations of the Grand River, who have had to accept the imposition of a Canadian government system since 1926, while doing their best to make the new government rule in ways consistent with the traditional longhouse government.

The ability for Indigenous Peoples to affectively exercise this right has been undermined by numerous racist policies that have attempted to eradicate Indigenous Peoples’ languages, cultures, and ways of being—such as the Indian Residential School system, which ran until 1996 (Anaya, 2014). Despite certain steps toward reparation, such as the 2008 apology by Prime Minister Stephen Harper, the extent to which this strategy of eradication has been reversed in favour of one that enables Indigenous Peoples to rebuild their cultures, languages, and ways of life has been limited. For example,

“In recent years, the federal Government has placed a priority on education, as highlighted by its development of the First Nations Education Bill. However, the bill has been met with remarkably consistent and profound opposition by indigenous peoples across the country. Indigenous leaders have stated that their peoples have not been properly consulted about the bill and that their input had not been adequately

incorporated into the drafting of the bill. The main concerns expressed by indigenous representatives include that (1) the imposition of provincial standards and service requirements in the bill will undermine or eliminate First Nation control of their children's education; (2) the bill lacks a clear commitment to First Nations languages, cultures, and ways of teaching and learning; (3) the bill does not provide for stable, adequate, and equitable funding to indigenous schools; and (4) the bill will displace successful education programs already in place, an issue that was raised particularly in British Columbia" (Para 21, p. 8).

The fact that First Nations languages, cultures, and ways of teaching and learning are not prioritized in educational programs, and that the Government failed to take appropriate measures for consultations with First Nations communities, demonstrates the lack of commitment on behalf of the Government to respect this right under article 5.1 and resembles previous genocidal initiatives such as Indian Residential Schools.

*Article 5.2.* Anaya's (2014) report did not include sufficient data to support the evaluation of the sub-component '*Indigenous peoples have the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State*'.

**Article 20: "Indigenous peoples have the right to maintain and develop their political, economic and social 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 20.1.* For the first subsection of 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*’, Canada received a score of a 1 out of 3. Canada received this score for this sub-component due to the restrictions placed on many First Nations via the Indian Act as well as the fact that resource extraction and development projects often encroach on Indigenous Peoples’ lands without their consent, destroying or harming the environment and further limiting their ability to enjoy their own means of subsistence and development. Anaya cites multiple sources of conflict where the Government and corporate interests over the resources on Indigenous territories are in direct opposition to the affected Indigenous communities.

The main reason Canada scored a 1 in this sub-section was Anaya’s assertion that “numerous [Supreme Court of Canada] cases have affirmed aboriginal rights to fishing, hunt, and access to lands for cultural and economic purposes” and the establishment of the duty to consult when any development project or legislative change is proposed that would affect the rights of Indigenous Peoples (Para 7, p. 5). Without this affirmation by the Supreme Court, the score would have been zero.

**Article 20.2.** The second sub-component of Article 20, *‘Indigenous Peoples deprived of their means of subsistence and development are entitled to just and fair redress,’* also received a score of 1. The process for getting redress for such instances of exploitation is often long and arduous, met with conflict on behalf of the government and corporate entities. Two processes exist for Indigenous communities to seek redress for the annexation of their lands and for the assertion of their rights over their historic lands: the comprehensive land claims process and the specific land claims process.

Apart from modern treaty making to comprehensively settle land claims is the specific claims process, which provides redress for historic grievances arising out of historic treaties and settlements already reached through negotiations or binding decisions of the Specific Claims Tribunal. The specific claims process includes a so-called Treaty Lands Entitlement mechanism, a procedure for settling land debt owed to First Nations that did not receive all of the land to which they were entitled under historic treaties. In particular, Treaty Lands Entitlement is significantly enhancing the land base of many First Nations, addressing a recommendation made by the previous Special Rapporteur in 2004. (Para 60, p. 17)

This sounds good, until Anaya provides detail about how onerous and expensive the processes are for First Nations communities, with the Government tending to “treat litigation and negotiation as mutually exclusive options, instead of complementary avenues toward a mutual goal” (Para 63, p. 18). Anaya indicates that:

Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating

mandates of Government representatives have also delayed or stymied progress toward agreements (Para 62, p. 18).

Further, this incurs enormous costs for all parties involved. For instance, “[o]utstanding loans to First Nations from Canada in support of their participation in the comprehensive land claims negotiations total in excess of CAN\$700 million. These loans remain owing even if a government party discontinues the negotiations” (Para 64, p. 18). He also provides examples of the costs of litigations:

For example, the Tshilhqot’in Nation’s aboriginal title litigation has cost the nation more than CAN\$15 million, and taken 14 years to pursue, including five years of trial, and the case is currently under appeal to the Supreme Court of Canada. Also, the Nuu-chah-nulth nation’s litigation over a commercial aboriginal right to fish has taken 12 years, including three years of trial and successive appeals. In the meantime, the Nuu-chah-nulth have been permitted to access very little of the fishery (Para 64, p. 18).

Adding to the difficulties of the extreme measures communities are required to take in order to provide evidence and support for their positions—and not to mention the exorbitant financial costs—is the uncertainty over resource development on Indigenous communities’ lands that are subject to ongoing claims:

It is understandable that First Nations who see the lands and resources over which they are negotiating being turned into open pit mines or drowned by a dam would begin to question the utility of the process. For example, four indigenous nations in the Treaty 8 territory in British Columbia have been in Treaty Land Entitlement negotiations for a decade, for ‘so long that there are almost no available lands left for the First Nations to select’ (Para 65, p. 18-19).

In sum, it is clear from Anaya's report that the self-determination of Indigenous Peoples in Canada is severely limited by the governing legislation, such as the Indian Act (1876) and the various treaties that the Indian Act made possible, imposed on First Nations people. The final score that Canada earned for the thematic area *self-government and self-governance* was 6 out of 18 (33.33%). The final score was reduced by nine points due to the Anaya's report containing insufficient evidence to support the analysis of whether Indigenous peoples freely determine their political status, whether Indigenous peoples have ways and means for financing their autonomous functions, and if Indigenous peoples have the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

### **Land and Natural Resources**

The third thematic area of the UNDRIP that I chose to include in the analysis of the implementation within Canada was '*land and natural resources*'. This theme was particularly important due to the fact that land is so central to the survival of Indigenous Peoples, as discussed earlier in this paper. This thematic area has been divided into two subthemes: *Access to land and natural resources*, and *Environmental protection, restitution, redress and consultation regarding extractives projects*. The applicable articles of the UNDRIP for the first sub-theme are Articles 26, 27, 28. The applicable articles of the UNDRIP for the second sub-theme are Articles 29 and 32. As with the previous two themes, these articles were operationalized and divided into their sub-components based using the implementation scale that I described in the previous section in order to conduct the analysis. In total, this thematic area was separated into thirteen sub-sections, two for Article 26, two for Article 27, two for Article 28, three for article 29, and three for Article 32, each one with the evaluation potential between 0 – 3, with a total possible score of 36 points.

**Table 8. Content analysis results: Land and natural resources.**

<b>Theme III - Land and natural resources</b>	
<b>Article Statements</b>	<b>Score</b>
<b>Article 26:</b>	
“Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” “States shall give legal recognition and protection to these lands, territories and resource. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”	
Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.	1
The State gives legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect the customs, traditions and land tenure systems of the indigenous peoples concerned.	1
<b>Article 27:</b>	
“States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”	
State has established and implemented, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.	D/K
Indigenous Peoples participate in the process previously mentioned.	D/K
<b>Article 28:</b>	
“Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” “Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”	
Indigenous Peoples have the right to redress through restitution or compensation for land, territories and resources which they have traditionally owned, occupied or used and have been confiscated without their free, prior and informed consent.	1

Unless otherwise freely agreed upon by the people concerned, compensation takes the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.	D/K
<b>Article 29:</b>	
“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.” “States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.”	
States establish and implement assistance programmes for Indigenous Peoples for conservation and protection of the environment without discrimination	0
States take effective measures to ensure that no storage or disposal of hazardous materials take place in the lands or territories or Indigenous Peoples without their free, prior and informed consent.	D/K
States take effective measures to ensure that programmes for monitoring, maintaining and restoring the health of Indigenous Peoples are developed and implemented by the peoples affected by such materials.	D/K
<b>Article 32:</b>	
“Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.” “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.” “States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”	
Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.	1
The State consults and cooperates 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.	1
States provide effective mechanisms for just and fair redress for any activities, and appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact.	D/K

**Article 26: “Indigenous peoples have the right to the lands, territories and resources**

**which they have traditionally owned, occupied or otherwise used or acquired. Indigenous**

**peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resource. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned”.**

*Article 26.1.* Canada received a score of 1 out of 3 for the first sub-component of Article 26, ‘*Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired*’. Anaya points out that “[t]here are approximately 70 recognized pre-1975 treaties that form the basis of the relationship between 364 First Nations, representing over 600,000 First Nations people, and Canada. In addition, 24 modern treaties are currently in effect” (Para. 3, p. 4). These treaties are what formed the reserve systems that many First Nations communities live on, including an agreement of the territorial boundaries that the First Nations communities were to live on. The land claims processes are in place to enable Indigenous Peoples to appeal to have their ancestral territories recognized and as a result, gain jurisdiction over their ancestral territories and/or have the land returned to them. With this said, however, and as already explained, the process by which the First Nations can appeal for the return of their ancestral territories is extremely onerous and costly. Additionally, ...the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial

approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements (Para 62, p. 18).

With regards to the Métis, Anaya points out that “in spite of recent judicial affirmation that the Métis had not been provided the lands they were owed under the letter and spirit of the constitutional agreement that created Manitoba, the Government does not appear to have a coherent process or policy in place to address the land and compensation claims of the Métis people” (Para 68, p. 19). This lack of coherent process for land compensation claims of the Métis people has gained even more significance since the Supreme Court of Canada’s affirmation of Métis peoples’ rights under section 35 of the Constitution Act on April 14, 2016, as it includes Métis peoples’ rights under the jurisdiction of the federal government.

**Article 26.2.** Canada received a score of 1 out of 3 for the second sub-component of Article 26, ‘*The State gives legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect the customs, traditions and land tenure systems of the indigenous peoples concerned*’. As demonstrated above, there are indeed mechanisms that exist for the affirmation of Indigenous Peoples’ rights over their traditional territories, and that there is a legal duty to consult Indigenous Peoples. However, the degree to which these rights are respected is abysmal. For example, Anaya indicates that the Indigenous representatives he spoke with expressed that:

...provincial governments do not engage the duty to consult until the development proposals have largely taken shape. When consultation happened, resource companies have often already invested in exploration and viability studies, baseline studies are no



longer possible, and accommodation of indigenous peoples' concerns requires a deviation from companies' plans... this situation creates an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans (Para 76, p. 22).

The negligence of Governments to respect Indigenous Peoples' rights to consultation and free, prior, and informed consent speaks to the complete lack of respect that is shown to the traditional customs, traditions and land tenure systems of the Indigenous Peoples concerned. Anaya also lists a number of proposed or implemented development projects, based on community meetings, which Indigenous representatives feel pose great risk to their communities and about which they feel their concerns were not adequately heard or addressed:

- The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast;
- The Kinder Morgan Trans Mountain pipeline twinning project;
- The New Prosperity open pit gold and copper mine in unceded Tsilhqot'in traditional territory, which was twice rejected by an environmental assessment panel;
- The Fortune Minerals open-pit coal mine permit, which issued over 16,000 hectares of unceded traditional territory of the Tahltan Nation in British Columbia;
- The Liquid Natural Gas pipeline and drill wells in northern British Columbia in Treaty 8 nations' traditional territory;
- Site C hydroelectric dam on the Peace River affecting Treaty 8 nations;
- The Athabasca oilsands project, which is contaminating waters used by the downstream Athabasca First Nation;
- The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional territory, in which a lack of prior consultation resulted in bidirectional litigation and the

imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI nation;

- Clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake;
- Two proposed hydroelectric dams affecting the Pimicikamak nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands;
- The re-opening of a Hudbay nickel/gold mine in Mathias Columb First Nation traditional territory without consultation with, consent of, or benefits sharing agreement with that nation;
- The construction of the Fairford and Portage Diversion water-control structures, and the 2011 lack of imminent flood protection, flooding, and relocation of Lake St. Martin First Nation;
- Approval of the construction of the Jumbo Glacier Resort in an unceded area of spiritual significance to the Ktunaxa Nation;
- Authorization of forestry operations in Mitchikanibikok Inik (Algonquins of Barriere Lake);
- Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations;
- Seismic testing for natural gas “fracking” extraction in Elsipogtog First Nation traditional territory (Para 73, p. 20-21).

Further, Anaya points out that he “repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed” (Para 71, p. 20).

**Article 27: “States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process”.**

*Article 27.1.* Anaya’s (2014) report did not include sufficient data to support the evaluation of the sub-component of Article 27, ‘*State has established and implemented, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used*’. As already discussed, two processes have been established to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources: the comprehensive land claims process and the specific land claims process. However, Anaya’s report does not indicate the degree to which these processes were developed in conjunction with Indigenous Peoples, nor the degree to which these processes are fair, independent, impartial, open and transparent.

**Article 27.2.** Anaya's (2014) report did not include sufficient data to support the evaluation of the sub-component of Article 27, '*Indigenous Peoples participate in the process previously mentioned*'. Anaya indicates that in 2013 the federal Government "established a Senior Oversight Committee composed of high-level federal and Indigenous officials to review and update the comprehensive land claims policy based on the principles of recognition and reconciliation" (Anaya, 2014, p. 19). However, Anaya does not indicate whether Indigenous people provide input into the land claims processes and the decision-making of the processes.

**Article 28: "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress".**

**Article 28.1.** Canada received a score of 1 out of 3 for the first subsection of Article 28, '*Indigenous Peoples have the right to redress through restitution or compensation for land, territories, and resources which they have traditionally owned, occupied, or used and have been confiscated without their free, prior, and informed consent*'. Despite the existence of mechanisms for Indigenous Peoples to make claims with the intent of the repatriation of the traditional lands that the Government (i.e., the comprehensive land claims process and the specific land claims process), these processes are met with an adversarial position from the government. Making things more difficult, the Government ensures that the process is time

consuming, costly, and onerous, making Indigenous claimants “to prove nearly every fact, including their very existence as a people” (Para 62, p. 18).

*Article 28.2.* The subsection related to the establishment and implementation of a process for recognizing and adjudicating the rights of Indigenous Peoples to their traditional lands, territories, and resources earned a score of 1 out of 3. Anaya points out that the land claims processes have both contributed to enhancing the land base of many First Nations and/or provided Indigenous communities with monetary redress. However, “[i]n the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands” (Para 62, p. 18). As such, the degree to which the compensation through the comprehensive land claims agreements is deemed equal in quality, size, legal status, and/or appropriate by the Indigenous recipients is not directly indicated. Additionally, in some cases the territories over which the land claims processes are considering, continue to be exploited by development and resource extraction companies; thus, “First Nations who see the lands and resources over which they are negotiating being turned into open pit mines or drowned by a dam would begin to question the utility of the process. For example, four indigenous nations in the Treaty 8 territory in British Columbia have been in Treaty Land Entitlement negotiations for a decade, for ‘so long that there are almost no available lands left for the First Nations to select’” (Para 65, p. 18-19).

**Article 29: “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. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented”.**

*Article 29.1.* The first subsection of Article 29, *States establish and implement assistance programmes for Indigenous Peoples for conservation and protection of the environment without discrimination*, received a score of 0 out of 3 because the majority of resource extraction and development projects that take place in Canada occur on Indigenous territories. Rather than setting up mechanisms to enable Indigenous Peoples to conserve and protect their environments, Anaya points out a number of strategies that the Government has initiated that undermine these efforts. The “Indigenous nations efforts to protect their long-term interests in lands and resources often fit uneasily into the efforts by private non-Indigenous companies, with the backing of the federal and provincial governments, to move forward with natural resource projects” (Para 69, p. 19). Further, the passing of the 2012 *Jobs, Growth and Long Term Prosperity* omnibus legislation that sparked the Idle No More movement, drastically reduced the amount of projects that require federal environmental assessments. This places the onus on the Indigenous communities to “carry out studies and develop evidence identifying and supporting” their environmental concerns (Para 72, p. 20). Another issue is that consultation processes required by the duty to consult often do not occur until resource extraction and development projects are already largely underway, at which point large amounts of capital have already been invested in the projects.

*Article 29.2.* Anaya’s (2014) report did not include sufficient data to support the evaluation of the sub-component ‘States take effective measures to ensure that no storage or disposal of hazardous materials take place in the lands or territories or Indigenous Peoples without their free, prior and informed consent’.

*Article 29.3.* Anaya’s (2014) report did not include sufficient data to support the evaluation of the sub-component ‘States take effective measures to ensure that programmes for monitoring, maintaining and restoring the health of Indigenous Peoples are developed and implemented by the peoples affected by such materials’.

**Article 32: “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 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. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact”.**

*Article 32.1.* The first subsection of Article 32, *Indigenous Peoples determine and elaborate the priorities and strategies for the development or use of their lands, territories, and resources and States consult and cooperate in good faith with Indigenous Peoples through their own representative institutions in order to obtain free, prior, and informed consent prior to the approval of any project affecting their lands, territories, or resources, particularly in connection with development, utilization, or exploitation of minerals, water, or other resources, also earned*

a score of 1 out of 3. This score was allotted to this subsection because of the fact that First Nations under the Indian Act do not have self-determination over their lands, territories, and resources. Also, of those that do have self-government, the government still has the ultimate decision-making power. Nevertheless, Indigenous communities do have the constitutional right to be consulted about any resource extraction or development project proposed to take place on their territories. Unfortunately, the duty to consult is often either not implemented at all or the consultation processes only take place, as indicated earlier, well into the project. Additionally, as the constitutional duty to consult has been interpreted as not granting Indigenous Peoples with veto power, Governments and corporations act as if they are not required to obtain free, prior, and informed consent from the communities to carry out the projects.

**Article 32.2.** The second subsection of Article 32, *'The State consults and cooperates 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'*, also received a score of 0 out of 3. As mentioned above, the Supreme Court of Canada has established a constitutional duty to consult with the affected Indigenous communities, upon whose land a proposed development or extraction project would occur. However, this duty to consult does not include the obtaining consent.

**Article 32.3.** Anaya's (2014) report did not include sufficient data to support the evaluation of the sub-component *'States take effective measures to ensure that programmes for monitoring, maintaining and restoring the health of Indigenous Peoples are developed and implemented by the peoples affected by such materials'*.



In sum, Anaya's report explicates important areas in which Indigenous Peoples' land and resource rights are impeded and violated. The final score that Canada earned for the thematic area *land and resources* was 5 out of 18 (27.8%). The final score was reduced by eighteen points due to a lack of evidence in Anaya's report to support the analysis of a number of sub-components of Articles 27, 29, and 32.

### Total Score

Taken together, the assessment of Indigenous rights in Canada in the themes *consultation and free, prior, and informed consent, self-government and self-governance, and land and natural resources* based on UNSRRIP James Anaya's (2014) report was 13/42 (31%).

**Table 9. Canada's total assessment score.**

Thematic Area	Score
<b>Consultation and free, prior, and informed consent</b> <i>(Articles 18, 19)</i>	2 / 6 (2 D/K)  <b>Reduced theme score: 1 / 3</b>
<b>Self-government and self-governance</b> <i>(Articles 3, 4, 5, 20)</i>	6 / 18 (3 D/K)  <b>Reduced theme score: 1 / 3</b>
<b>Land and natural resources</b> <i>(Articles 26, 27, 28, 29, 32)</i>	5 / 18 (6 D/K)  <b>Reduced theme score: 0.83 / 3</b>
<b>TOTAL</b>	13 / 75 (11 D/Ks)  <b>Adjusted Final Score: 13 / 42</b>  <b>Reduced Adjusted Final Score: 0.93 / 3</b> <b>= 31%</b>

## Discussion

In this chapter, I will discuss my findings within the theoretical frameworks that I outlined earlier in this study with attention to the interpretations and theory emerging from this analysis. Subsequently, I will consider the contribution of this work, identifying what it adds to the knowledge base and how it can be applied in order to inform practice, including recommendations to the UNSRRIPs to consider when evaluating member state compliance to the UNDRIP (or any researcher or agency that aims to conduct such an evaluation). Finally, I will highlight the limitations of this study and outline how I plan on mobilizing the findings of this research.

### Canada's compliance to the UNDRIP

The purpose of this research was to build off of the work that has been done by James Anaya in 2013/2014 in order to ensure that the critiques of the human rights conditions of Aboriginal people in Canada are not put in the past and forgotten. In this research I analyzed Anaya's 26-page written country report for Canada by coding the content for the articles related to: (a) consultation and free, prior and informed consent; (b) self-government and self-governance; and (c) land and natural resources. I then used the coded text as descriptive data which were then quantified to develop a metric for the completion of the UNDRIP assessment tool.

The assessment of Indigenous rights in Canada on the identified themes of consultation and free, prior, and informed consent; self-government and self-governance; and land and natural resources based on an analysis of UNSRRIP James Anaya's (2014) country report indicates that Indigenous rights in Canada in 2013 did not at that time even approach the rights standards set out in the UNDRIP. Canada's final overall compliance score, 31%, is well below a failing grade.

It is important to unpack this score, so that it is not left floating out in the open with no meaning to ground it in. As I described earlier, the scoring system that we used was from 0 to 3 for each of the articles, 0 being an absence of compliance and active violation of the right, 1 being limited compliance and beginnings of implementation, 2 being partial compliance and evidence of gradual implementation, and 3 being complete compliance. Applying this scoring framework to a percentage, 0% to 33.32% would reflect a score of 0 out of 3 on overall compliance to the UNDRIP, 33.33% to 66.65% would reflect a score of 1 out of 3, 66.66% to 99.99% would reflect a score of 2 out of 3, and 100% would reflect a score of 3 out of 3. Canada's score, applied to the compliance metric is 0.93 out of 3. As such, Canada's final score indicates that Canada actively violates Indigenous Peoples' rights established within the articles assessed in this study, with some evidence of the beginning of uptake of the UNDRIP. This provides a stark contrast to the federal government's interpretation of the UNSRRIP's Canada report.<sup>5</sup>

The results confirm that much improvement needs to occur in order for Canada to be able to claim that Aboriginal people enjoy the rights that they deserve. Due to gaps in the UNSRRIP's country report (which was not designed to be exhaustive of all articles in UNRIP), the research questions that I set out to answer through this evaluation could not be adequately answered. Too many Articles contained one or more answers of 'Don't know' (D/K). Also, the amount of D/Ks is problematic for drawing concrete conclusions and reliable scores. As a result, the findings should be taken with some degree of reservation as the metrics may be under or over stated based on limited sources. Even though the information in the country reports did not allow me to fully answer every question I originally posed, they nonetheless allowed me to

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<sup>5</sup> Read the federal government's response here: [http://www.international.gc.ca/genev/statements-declarations/report\\_special\\_rapporteur-rapport\\_rapporteur\\_special.aspx?lang=eng](http://www.international.gc.ca/genev/statements-declarations/report_special_rapporteur-rapport_rapporteur_special.aspx?lang=eng).

provides a new perspective on Indigenous Rights in Canada, enabling the ability to quantitatively understand which rights are being most neglected and/or violated.

The area of most concern for Canada (within the area of rights I investigated) is the lack of consultation regarding resource extraction and development initiatives on Indigenous territories. This is not surprising given the centrality of resource extraction and development, domestically and extraterritorially,<sup>6</sup> to Canada's economy. Large improvements need to be made in the processes of consulting with Indigenous Peoples with regards to the development of their lands. First and foremost, the most glaring insufficiency with the current 'duty to consult' is the fact that Indigenous Peoples are not imbued with veto power and thus, governments and businesses do not have clear, consistent, or mandated processes for seeking consent. The fact that Indigenous communities' rights to FPIC continue to be violated indicates that they do not have self-determination, which is an important right set out in Articles 3 and 4 in the UNDRIP. Not only is self-determination a right set out in the UNDRIP that has critical implications for the wellbeing of Indigenous communities (Mikkonen & Raphael, 2010) it is one of the most important tenets of decolonization.

It is also important to acknowledge that the state is not, and cannot be viewed as, the only actor responsible for respecting the Indigenous Peoples' rights. The resource extraction and development industry is also responsible for upholding and respecting the rights of Indigenous Peoples, as the participating businesses and individuals are directly involved with the Indigenous communities and the taking of the resources. Currently, industries have been drafting impact

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<sup>6</sup> See Revenga, A.'s (2005) documentary *Sipakapa is not for sale* for an example of Canada's resource extraction activity on Indigenous territory in other countries. <http://www.twn.org/catalog/pages/cpage.aspx?rec=1180&card=price>.

benefit agreements (IBAs), which are meant to be compensatory, offering promises such as jobs and money for the affected Indigenous communities. However, these processes are often not done with free, prior and informed consent or even marginal effort at consultation, and can be seen more as coercive in nature (Hall, 2012). Additionally, even if the state and industry take measures to implement and comply with the Declaration and the standards of rights defined therein, lack of adoption at the level of the individual citizens within Canada can cause such progressive actions to be for nil, as any legislative and institutionalized change can be reversed by backlash from the Settler population (Bowen & Bok, 2001; Gridley & Breen, 2001). In order to prevent such backlash, there needs to be public education about Indigenous rights and Indigenous rights norms, which coincides with the legal and policy level changes in order to get buy-in from the larger Canadian population.

**Consultation and free, prior and informed consent.** The results for the theme *consultation and free, prior and informed consent* indicate that, within the Canadian context, Indigenous Peoples' rights to be consulted are continually being violated. Governments and development/resource extraction corporations proceed with policy changes and development/extraction projects without consulting with or obtaining the free, prior, and informed consent of the affected Indigenous Peoples (Anaya, 2014, para 47, 49, 73). These findings are consistent with the settler-colonial structure of Canadian society. Consulting with Indigenous Peoples and enabling them to have decision-making power is counter to the imposition of colonial rule—thus, it is not surprising that Indigenous communities report either being entirely excluded from decision making or from being inadequately heard. The subjugation of Indigenous Peoples continues to be present in Canadian society.

**Self-government and self-governance.** An important element that arose from the results was the continued denial of Indigenous Peoples' rights and ability to govern their own affairs. These rights to self-government and self-governance were particularly apparent with the limiting framework and dependency model imposed on First Nations through the Indian Act. Anaya's report reiterates over and over the limitations put on First Nations communities by the Indian Act structure (i.e., para 13, 14, 42, 52, 55). Anaya's discussion of this touches on nearly all facets of life, with the consequences of deviation or resistance being funding cuts—which, in already underfunded communities, is simply not an option. The coercive nature of this relationship embodies the tenets of settler colonialism.

**Land and natural resources.** All of these rights are interconnected and overlap with one another. Thus, the rights to consultation and free, prior and informed consent and to self-government and self-governance are intimately connected with Indigenous Peoples' rights to their lands and natural resources. The violation of Indigenous Peoples' rights to consultation and FPIC and the imposition of governance structures that limit their ownership and decision making power limits their ability to assert their jurisdiction over their lands and resources. Again, these findings pertaining to the violation of Indigenous Peoples' rights to assert their jurisdiction over their lands and resources explicate the fact that settler colonialism, and thus, the drive to exterminate Indigenous Peoples through the destruction of their lands (and therefore their cultures, languages, and ways of knowing and being) is alive and well in the Canadian context.

In sum, the findings are consistent with the theoretical framework of settler colonialism, which I used as an explanatory mechanism for why Canada continues to deny the rights of Indigenous Peoples in Canada—particularly in relation to land rights and seeking Indigenous Peoples' consent to commence development and extraction initiatives. As I described earlier

when I laid the foundation of the settler-colonial framework, the ultimate goal of settler colonialism is the erasure of Indigenous Peoples from the land (Veracini, 2011). This can be achieved through physical displacement (i.e., encroaching on Indigenous territories through development and extractive initiatives) and/or cultural and psychosocial approaches (i.e., assimilative practices, denial of Indigenous rights to territory, refusal to acknowledge Indigenous Peoples' right to influence what happens on their territory).

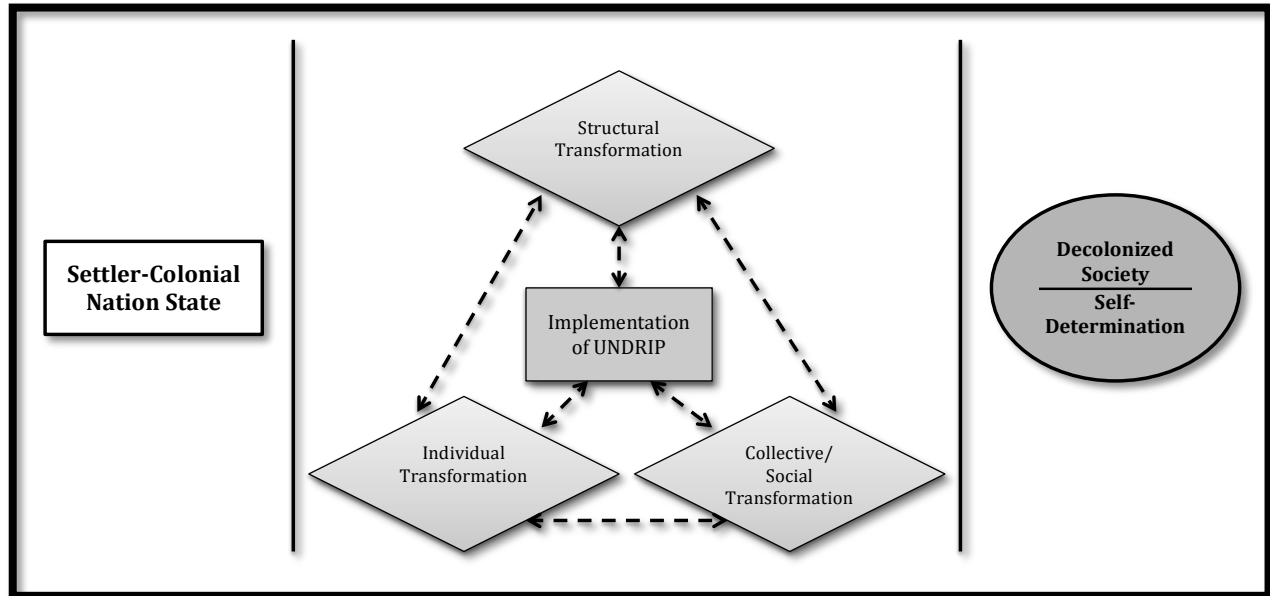
### **Implications**

This research has demonstrated that greater accountability is needed regarding the implementation of the UNDRIP, particularly for those rights that challenge the settler-colonial agenda, such as those related to self-determination, FPIC, and natural resource rights. These rights were precisely those that led Canada to be one of four states to reject the Declaration when it was adopted by the UN General Assembly in 2007, and to claim, upon becoming a signatory state in 2010, that the Declaration is merely an 'aspirational' document. The lack of compliance is indicative of the need for renewed pressure on the state to comply with these standards. This pressure is indeed mounting, with the Truth and Reconciliation Commission, Idle No More, the demand for an inquiry into Missing and Murdered Aboriginal Women, to name but a few of the avenues through which pressure is applied, which—with the change in federal leadership in 2015 to a Liberal government under PM Justin Trudeau—has led to the mandated commitment to implement the UNDRIP (Rt. Hon. Trudeau, 2015) and to the full adoption of the Declaration without reservations on May 10, 2016 (Hill, 2016). However, despite the progressive stance of the Liberal government, monitoring the implementation of the UNDRIP will be critical for holding the government accountable. This tool is an emerging metric for measuring state

compliance to the UNDRIP, and is critical tool for providing evidence-based numeric weight to the process and outputs of monitoring compliance.

**Decolonization.** As the numerous authors pointed to in the literature I reviewed in Part One of this study, decolonization of settler-colonial societies is a multifaceted set of processes, including transformation on individual, relational, legal, political, economic, and institutional levels. With the mounting acceptance of the UNDRIP by the international community, and the increasing legal scholarship and case law affirming the legal weight of numerous articles within the Declaration, I would assert that the implementation of the UNDRIP is a necessary component of decolonizing processes. If Indigenous Peoples' rights continue to become normative with increasingly clear legal standing, they can be more readily enforceable. Such is the case with other human rights statutes and covenants that Canada endorses (Boyer, 2014). In this manner space will be opened up to enable Indigenous Peoples to pursue their decolonization more freely. To reflect this conceptualization, I have developed a model for decolonization, which visually presents the processes of transformation and the directions and applications of pressure that are required (see Figure 3).





**Figure 3. Decolonization framework**

In this decolonization framework, I integrate the varied perspectives on decolonization outlined in the literature, including individual, social, and structural level points of intervention. Understanding social change and the multi-directional nature of influence between the individual and the various levels of context, I have integrated an ecological approach (Bronfenbrenner, 1977; Trickett, 2009) and assert that transformation must occur within multiple levels: individual, collective/social, and structural. I distinguish the implementation of the UNDRIP from merely a structural intervention because, as is discussed within the human rights norm literature, the implementation of international human rights norms *necessitates pressure from all levels and effects all levels* (Brysk, 1993; Risse, et al., 1999; Romanow, 2010).

The implementation of these rights norms will contribute to shifting the individual, collective/social, and structural levels of a nation state, and thus, contribute to the processes necessary for settler decolonization and the opening of space that will enable Indigenous Peoples to fully realize their potential for decolonization. The model depicted above is a process model,

moving from a settler-colonial society to a decolonized society, where Indigenous Peoples' right to self-determination in all of their socio-political, cultural, and economic affairs, is respected. The center of the model, between these two versions of society, presents the processes of transformation that must occur in order to make the shift. Because all levels of Bronfenbrenner's ecological model are nested within each other, and are therefore relational, none of these levels can change in isolation. All aspects of the model, individual transformation (micro level), collective/social transformation (meso level), and structural transformation (macro level) are mutually influencing. To expound further, shifts that the individual level contribute to shifting the collective/social and structural levels, and any changes at these other two levels contribute to shifting the individual level. This same logic occurs when looking at any of the levels: shifts at the collective/social level influence change at both the individual and structural levels, and change individual and structural level transformations influence the collective/social level, and so on.

In this decolonization framework I expand upon Bronfenbrenner's ecological model, using the same, relational logic but adding the implementation of the UNDRIP as an additional element. Some might argue that the implementation of the UNDRIP would reflect structural transformation because it is presented to nation states in the international arena and its adoption is determined by political representatives. As such, it can be considered as a form of policy. I do not deny this point; however, I conceptualize the UNDRIP as something more than just policy for states to adopt and implement. The UNDRIP is a set of norms and ethical standards, which also concern individuals, communities, and businesses. As such, the adoption and implementation of the UNDRIP needs to occur within all of these spheres. Additionally, I

present the implementation of the UNDRIP in the centre of the decolonization model, as the central element to influence the transformations needed to get to the decolonized society.

The centrality of the implementation of the UNDRIP is similar to the Truth and Reconciliation Report's (2015) call for the UNDRIP to be the "framework for reconciliation in Canada" (p. 15), as it asserts that the implementation of the UNDRIP articles that focus on consultation and free, prior and informed consent, self-government and self-governance, and land and natural resource rights preclude the decolonization in the other levels of the model. In other words, it is the implementation of international human rights norms, with particular focus on those rights ascribed specifically to Indigenous Peoples will enable Indigenous communities to have more direct control over their environmental, cultural, social, political, and economic affairs. Indigenous communities will be liberated from the perpetual fight to defend against external threats that directly related to their survival as Indigenous Peoples and will be able to turn their resources and energy to rebuilding their cultures and societies as they wish.

Where this differs from the TRC's statement is that reconciliation is not an immediate possibility, but is only possible once decolonization has occurred. The UNDRIP can be used as a framework for reconciliation once the UNDRIP has been implemented and is complied with by all levels of government, industry, communities, and individuals and once Indigenous communities initiate their processes of decolonization, because only at this point will the power relationship between the Indigenous and Settler populations be more horizontal. This is important because it implies that, if we are truly striving for reconciliation, the status quo cannot continue and that Settler society will be accountable for committing and perpetuating a multi-century assault against Indigenous Peoples. At the very least, this accountability will be in the form of a *disempowerment* of the settler state and the Settler population and a wholesale

restructuring of the institutional, political, and legal structures that have benefited Settler society at the expense of Indigenous Peoples. Only then can any sort of conciliation be made between the Indigenous and Settler populations. This accountability and disempowerment helps to explain why the Government of Canada, in spite of the public promises and inspiring rhetoric, continues to resist real compliance with the Declaration.

### **Limitations**

A number of limitations of the present study are important to highlight. These limitations include: the high-level scope, the limited scope of data, and the incomplete data in the UNSRRIP's Canada Report.

**Limited scope of data.** The scope of the data collected for this assessment of the status of the implementation of UNDRIP in Canada limits the ability to make confident assessments of each of the subsections of the selected UNDRIP articles. Additionally, such a limited, high-level scope fails to be sensitive to the nuances and complexities of the situations within the diverse array of Indigenous communities in Canada. Rather, this study provided a general trend as to how Canada complies with the rights of Indigenous Peoples related to consultation and free, prior and informed consent, self-government and self-governance and land and natural resources. In order to improve the validity of the assessment, a much more rigorous and comprehensive review of available documents above and beyond the UNSRRIP's Country Report needs to be done. This document review needs to add more academic research, government policies, laws, and court rulings related to the relevant articles within the UNDRIP.

**Incomplete data in UNSRRIP's Canada report.** The ultimate goal of this study was to establish a baseline evaluation of the state of Indigenous Rights for Articles applicable to the three theme areas: consultation and free, prior and informed consent, self-government and self-

governance, and land and natural resources. However, due to a lack of information within the UNSRRIP's report, a comprehensive assessment of a number of the Articles was not possible. This hinders the applicability of this study as a baseline for subsequent evaluations of all relevant articles within the UNDRIP to be compared. Such a baseline measurement of the implementation of the UNDRIP would need to be comprehensive in nature and include an evaluation of all Articles and sub-components of each of the Articles. The UNSRRIP did not set out to provide a comprehensive review of the implementation/attainment of Indigenous rights in Canada given limitations of time and resources. However, the country report did provide enough information to provide a score for a number of articles related to the three themes that I focused on, and those articles can be used as a baseline for comparison in future years and with other countries.

The data limitations within the UNSRRIPs report, while somewhat problematic for the validation of the pilot assessment tool, highlight the need for greater resourcing for more comprehensive compliance monitoring for signatory states to the Declaration. It is not surprising that, given the short amount of time that the UNSRRIP was in Canada, the report does not provide a detailed evaluation of Canada's compliance to all Articles of the UNDRIP and thus, was limited by which data to include and which data to exclude from the report. Looking at the structure of the report, the UNSRRIP's main inclusion criterion was the rights violations being most egregiously violated. While this is critical information to make public, it is not sufficient for monitoring the compliance of signatory states to the Declaration—which is ultimately the role of the Expert Mechanism on the Rights of Indigenous Peoples (of which the UNSRRIPs is a part). In order to sufficiently monitor compliance, the evaluation and reporting would need to be clearly structured around the Articles of the Declaration, listing all Articles and addressing each

one. In order to propose direction for the improvement of the UNSRRIP country reports, I make the following recommendations:

***1. Adopt a comprehensive and standardized reporting structure for the country reports, in order to provide a clear evaluation of the situation of the rights of Indigenous Peoples—directly related to the Articles within the UNDRIP.*** While it is clear within James Anaya’s report that he considered Canada’s adherence to the previous Special Rapporteur, Rodolfo Stavenhagen’s recommendations in 2004, and thus commented on how Canada has progressed since 2004, the approach that Anaya took for structuring the report is inadequate for relating the findings directly to the UNDRIP. Further, it does not provide a framework for evaluating Canada’s compliance to the UNDRIP to measure improvement or changes over time. Adopting a standardized format for evaluating and reporting on a state’s compliance to the UNDRIP would make a temporally based implementation evaluation possible.

It is important to highlight the fact that there are many valid methods and approaches of inquiry, and the imposition of quantitative-based methods has been an important contribution to the colonization and erasure of Indigenous Peoples through making Indigenous ontologies and epistemologies seem invalid (Thomas, 2012). In conducting this research and in making these recommendations I do not advocate for the replacement of the UNSRRIP’s qualitative-based form of inquiry and reporting with the quantitative-based instrument that I employed in this study. Rather, the intention is to use an UNDRIP compliance assessment tool as a supplementary method to provide another way of looking at the situation of Indigenous rights within a given country that resonates with governments traditional assessment processes by providing a metric for accountability. The recommendation is to provide a more systematized

structure to the data collection and reporting in order to address each of the themes and Articles of the UNDRIP.

**2. Detail the data collection and analysis procedures that inform and support the country report evaluations.** A gap that I encountered while reviewing Anaya's report was the lack of detail about the methods that the UNSRRIP and his team employed for gathering the data that informed his report. For instance, while Anaya mentions the duration of his visit to Canada and that he travelled across the country to speak to various Indigenous communities and non-Indigenous political actors, he did not include the details such as the number of communities he visited, how many politicians he spoke with, which parties they belonged to, etc. Moreover, he provides limited sources of the legislative and policy data that was reviewed. Outlining the data collection methods—as well as the data themselves—would go a long way to making the evaluation process more transparent, which in turn would enable the evaluation to hold more weight in effecting policy and practice within nation-states.

### **Significance of the Research**

The current research project is significant because it contributes to the growing discourse directed at critiquing and transforming the structures of the Canadian nation state that perpetuate the colonial relationship and threaten the survival of First Nations, Métis, and Inuit cultures. The analysis of Anaya's (2014) descriptive country report in order to create a quantified evaluation of Canada's compliance to the UNDRIP will contribute to Dr. Terry Mitchell's larger program focused on comparing and ranking the compliance of UNDRIP signatory countries. The ranking of countries based on compliance to the UNDRIP will be used as a mechanism to apply pressure to states through exposing those states that are lower ranked and that get poor scores of compliance. Making this visible will provide additional support to those actors that are actively

engaged in affecting change how states relate to Indigenous populations and will, for those countries that are actually committed to Indigenous rights, “shame” or threaten the states’ international reputations (Kelley & Simmons, 2015).

This research is also important in that it reveals the limitations of time and resources provided to the UN Special Rapporteur on the Rights of Indigenous Peoples’ for monitoring activities. As such, it provides an important critique for improving how the United Nations can systematically monitor the degree to which states are upholding their obligations to their commitments to respecting the rights of Indigenous Peoples. Additionally, the application of UNDRIP assessment tool to the UNSRRIP country reports provides a significant contribution as it enables comparability across time and across countries. This also enables comparisons to be made across themes, which will highlight policy directions and provide impetus for the application of resources where they are needed most.

However, if the evidence used to back up the pressure is to hold weight, it needs to be seen as credible and valid (Riemer & Bickman, 2011). Due to the gaps in the evidence, the findings of this study lack comprehensiveness, which may be cause for the scoring to be seen as less credible.

**Contributions to knowledge and practice.** Despite the fact that the results of this study cannot be conclusive the study provides an important contribution to knowledge by uncovering the gaps in the Anaya report. Scholarly analysis of the UNSRRIP country reports is limited, and so identifying gaps in the reporting of the UNSRRIP evaluation reports is critical for the informing best practices by which these kinds of evaluations should adhere. As discussed, implementing an effective monitoring mechanism is critical for establishing the grounds and evidence necessary for enforcement and holding countries accountable. It is important to restate



that the Anaya country report provides a rich and detailed external descriptive assessment of human rights compliance that was not intended to be quantified; the report contains critical information about the situation of Indigenous Peoples in Canada and the relationship that exists between FNMI people and the provincial and federal Governments. From an analysis of the many Articles of the UNDRIP that Anaya's report does discuss, sufficient data is provided to enable an evaluation. A systematic scoring procedure reveals a failing grade on Indigenous rights in Canada. The empirical metric developed for the UNDRIP compliance assessment tool contributes to a critical reflective discourse on Canada's relationship with FNMI. Based on this initial analysis of Canada's level of compliance on these significant areas of practice regarding consultation, FPIC, self governance, and land rights, Canada received a failing report card indicative of the much disguised and discounted adversarial and destructive framework of settler colonialism persistent within contemporary Canada.

The methodological tool that the Indigenous Rights and Social Justice research group developed to assess the situation of Indigenous Peoples in the key regions and countries that I have previously mentioned has the potential to be used outside of this report. This methodology can be a useful tool for governments, Human Rights organizations, and academics to use in order to aid in the realization of article 38 of the UNDRIP which refers to the duty of the State to implement the rights set out in the UNDRIP. Likewise, this methodology could be valuable for Indigenous communities and organizations to aid in their efforts towards the realization of their rights by providing a concrete and clear picture of the degree to which a community enjoys the rights set out in the UNDRIP.

As discussed earlier in this study, feedback through constant evaluation is important for gaining awareness of progress and for identifying issues within a given system. Additionally, an

important aspect when considering feedback is that in order for people to pay attention, the feedback needs to be seen as credible and valid (Riemer & Bickman, 2011). Reflecting on this makes clear the significance of this research. By identifying gaps in the monitoring mechanism used by the United Nations Expert Mechanism on the Rights of Indigenous Peoples—which includes the office of the UN Special Rapporteur on the Rights of Indigenous Peoples—is an important contribution to inform how the evaluation of countries can be conducted and reported on in the future in order to hold more weight at all levels.

While the current analysis of the Anaya (2014) report did not yield the anticipated outcome of establishing a baseline for the comprehensive evaluation of a complete set of identified articles within UNDRIP, the systematic review and efforts to quantify compliance revealed significant deficits in compliance and a failed report card (13 out of 42; 33%) in contradiction to the official government representation of the country report, which presents the UNSRRIP's report as praising Canada's engagement with achieving Indigenous rights. The entire statement released by the Government of Canada is riddled with this misrepresentation. One example is the following:

The report acknowledges that, while many challenges remain, many positive steps have been taken to improve the overall well-being and prosperity of Aboriginal people in Canada. We are working hard to ensure constructive engagement and reliable channels of communication aimed at positive and meaningful outcomes in support of ongoing national efforts, to improve the lives of Indigenous communities [...] As pointed out in the report, Canada's policies and processes to address historical grievances are an example to the world, and many of Canada's efforts provide important examples of reconciliation and accommodation. (Global Affairs Canada, 2014)

This thesis contributes an evaluation and reporting mechanism, which will make it more difficult for states to misrepresent the findings.

### **Knowledge Transfer**

An important aspect of conducting research—particularly when the research is geared towards cultural and social critique as well as contributing to transformative change—is the mobilization of the knowledge produced through the research. Knowledge mobilization is a framework underlying the application of research knowledge into practice (Bennett & Jessani, 2011). In this final section of my proposal I will first discuss how I plan to translate and mobilize the knowledge generated through this research.

There are a number of ways in which I plan on mobilizing the research findings of this study. First, I plan on writing academic journal articles with Dr. Mitchell on the development of the Indigenous rights scale as well as on the assessment of the implementation of Indigenous rights in Canada. These articles will be submitted to relevant journals, such as *American Journal of Community Psychology*, *Journal of Community Psychology*, *Human Rights Quarterly*, and *Decolonization: Indigeneity, Education & Society*. This will enable me to contribute to the growing discourse on the implementation of the UNDRIP by nation-states. Additionally, I plan to present my research at relevant community psychology, Aboriginal, and human rights conferences.

In addition to transferring the findings of my research to other academics and interested parties through publications and conference presentations, I will be involved in the mobilization of the UNDRIP compliance assessment tool. Supported by the IRSJ research group I will provide presentations and training sessions for members of the Pan-American Indigenous Rights and Governance Network (PAIR-GN) on how to use the tool. PAIR-GN is a network of

Indigenous and non-Indigenous scholars, diplomats, lawyers, and Indigenous community leaders from across North, Central, and South America. Among the members, there are important actors that can help to further the reach of this tool. Some of these include: former Prime Minister of Canada, Paul Martin, former Grand National Chiefs Ovide Mercredi and Phil Fontaine, Dr. Dalee Sambo Dorough, Chair of the United Nations Permanent Forum on Indigenous Issues, Rodolfo Stavenhagen, past UNSRRIP, and Victoria Tauli-Corpuz, the current UNSRRIP. This, I see as being the most important and useful aspect to transfer as it will increase the capacity of Indigenous communities and domestic and transnational human rights organizations to apply the pressure needed to compel governments and industry to comply with the rights standards defined in the UNDRIP. It will enable communities and organizations to assess their own situations using a standardized, evidence-based measure.

### **Future Research**

This research can be expanded upon in numerous directions. The first, is to conduct a comprehensive evaluation of state compliance to the UNDRIP and then, once there is sufficient data to evaluate each of the rights, get two or more people to analyze the data and apply the UNDRIP evaluation tool that I piloted in this study. With scores from multiple raters, an inter-rater reliability analysis can be conducted. This is an important next step to ensure that the findings are reliable and repeatable when used by different people.

The second direction to expand upon this work is to expand the purview of the UNDRIP evaluation tool to include extraterritorial rights. In other words, enable the tool to evaluate the treatment of Indigenous Peoples by states and corporations operating in other countries. This will be a particularly important for evaluating Canada, given that nearly 76% of the world's mining corporations are based in Canada (Dean, 2013).

### Conclusion

In this study I set out to evaluate Canada's compliance to the United Nations Declaration on the Rights of Indigenous Peoples in three areas—consultation and free, prior and informed consent, self-government and self-governance, and land and natural resources—using an UNDRIP compliance Assessment Tool developed by the Laurier Indigenous Rights and Social Justice (IRSJ) research group. This study, though the piloting of the UNDRIP compliance assessment tool, is contributing to a larger project on the internationalization of Indigenous rights through the Pan-American Indigenous Rights and Governance Network (PAIR-GN). Prior to conducting the evaluation, I provided a brief overview of the context of the situation of Indigenous Peoples in Canada and Indigenous rights Internationally. I then established the theoretical frameworks that provided the foundations for the analysis of the study. Settler colonialism, of the last 500 years, has been an ever-present reality that affects how both Indigenous and non-Indigenous people. Yet while Indigenous Peoples (or Native Canadians) have never failed to recognize this reality, settler-colonists and their nation-states of origin typically under-acknowledge it, with the tacit hope that Indigenous people will simply forget their colonized status, and stop standing in their way (Blaser, Feit, and McRae, 2004). This fact was reinforced through the research conducted in this study. Government and corporations continue to deny Indigenous Peoples' rights, taking, developing, and destroying their lands and resources without their free, prior and informed consent. This threatens their very existence, including the survival of their languages, cultures, and ways of being and knowing.

My hope is that the United Nations Special Rapporteur on the Rights of Indigenous Peoples takes up not only the UNDRIP compliance assessment tool, but my critique. My critique has the potential to lend insight into how to strengthen the mechanisms that are striving

to hold countries accountable to their commitments to comply with the UNDRIP within their domestic policies, legislature, and institutions. The tool has the potential to inform the efforts of individuals, communities, and organizations to help push for the implementation of the UNDRIP and, which may open up space to enable Indigenous Peoples to assert their rights to self-determination and to define and pursue their own means of decolonization.

The metric that I used for the analysis of the Anaya (2014) report is useful and the operationalization of the tool in this context was appropriate. Further, as the instrument is directly tied to the text of the UNDRIP articles, the metric has strong validity. There is, however, important work to be done on analyzing the reliability of this tool when used by multiple people. I could not do such an analysis for this study due to the limited data that were present in the Anaya report. The next steps for the tool will be to utilize it for an analysis of a more comprehensive set of data sources, which will enable a reliability analysis to be conducted. The current UNDRIP reports are rich in information, yet insufficient for tracking and evaluating all rights as protected in the Declaration—insufficient even for an adequate analysis of the three targeted categories that I focused on for this research.

The UNDRIP assessment tool is important for providing a clear indication of the status of Indigenous rights in the form of a quantified measure of compliance—a comparative metric. Such a quantitative score is necessary for preventing states from twisting the findings presented in a qualitative compliance report to suit their agenda, as the Government of Canada did in its official response to the UNSRRIP’s damning report (Global Affairs Canada, 2014). While Canada is strong in some respects, such as the establishment of constitutional and institutional mechanisms to support Indigenous rights related to consultation and FPIC and in self-government, it still receives a failing grade, particularly for the lack of application of these

institutional mechanisms in a manner reflective of the UNDRIP. In turn the metric points to areas of priority for policy and action—particularly related to the implementation of FPIC. The Government of Canada must develop and adhere to policy standards of FPIC when working with Indigenous Peoples in any domain that affects their lives. In a period of reconciliation, the citizens of Canada are in a position to take action to demand that these policies are developed and respected by the federal government. UN Special Rapporteur James Anaya’s report similarly recommends that Canada improve upon the meaningful participation of Indigenous Peoples in decisions that effect them and to implement free, prior and informed consent into these process (Anaya, 2014, para 87, 89, 91, 92, 93, 95, 98).

In this thesis, I have also developed a process model for increasing indigenous autonomy and self-determination, which centralizes compliance with and implementation of the UNDRIP. The implementation of the UNDRIP in all spheres, from the micro, individual level to the macro, structural level, simultaneously influences and is influenced by the transformation of all these spheres, in a mutually influencing processes. Thus, all of us in society can help to ensure that Indigenous rights are respected. The development and utilization of this UNDRIP compliance assessment tool is one way in which I am attempting to contribute to this process toward decolonization. This tool can be used as a framework to help monitor and guide the uptake and implementation of the UNDRIP, to hold Canada accountable to our commitments to human rights and respecting diversity.

The political context is rapidly shifting, with more and more attention from the public, public figures, organizations and businesses, news, and politicians being directed toward the unsustainable and inequitable relationship between Settler society and Indigenous Peoples. Momentum is growing, and this compliance assessment tool can help prioritize and keep the

momentum growing and moving in the direction most important for achieving Indigenous self-determination.

In sum, in this study I have piloted a UNDRIP assessment tool and have discussed the contributions, limitations, and implications of this research and the use of the tool. The tool can contribute to the mounting pressures being placed on states such as Canada to respect Indigenous rights. The tool, however, is just that, a tool; one piece in a complex puzzle towards achieving rights-based coexistence. As a nation, we need to open the space for Indigenous Peoples to assert and enjoy their right to self-determination. Individuals, communities, local, national, and transnational organizations, businesses, Indigenous and non-Indigenous people alike need to continue to take action and demand that Canada implements the UNDRIP, and that the entire implementation process is fully guided by and done in consultation with Indigenous communities across the country.



**Appendix A:****Content Analysis Results Summary Tables****Theme I: Consultation and free, prior and informed consent.**

<b>Theme I - Consultation and free, prior and informed consent</b>	
<b>Article Statements</b>	<b>Score</b>
<b>Article 18:</b>	
Indigenous people have the right to participate in decision-making in matters which would affect their rights with their own representatives and through their own procedures.	
Indigenous peoples participate in decision-making in matters which would affect their rights.	1
In decision-making matters, Indigenous peoples have their own representatives chosen by themselves in accordance with their own procedures.	D/K
Indigenous peoples have the right to maintain and develop their own indigenous decision-making institutions.	D/K
<b>Article 19:</b>	
“The State has a duty to consult with Indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”	
The State consults and cooperates in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.	1

**Theme II: Self-government and self-governance.**

<b>Theme II - Self-government and self-governance</b>	
<b>Article Statements</b>	<b>Score</b>
<b>Article 3:</b>	
“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.”	
Indigenous peoples have the right to self-determination	1
Indigenous peoples freely determine their political status.	D/K
Indigenous peoples freely pursue their economic, social and cultural development.	1
<b>Article 4:</b>	
“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.”	
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.	1
Indigenous peoples have ways and means for financing their autonomous functions.	D/K
<b>Article 5:</b>	
“Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.”	
Indigenous peoples have the right to maintain and strengthen their distinct political, economic, and social systems or institutions.	1
Indigenous peoples have the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.	D/K
<b>Article 20:</b>	
“Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.”	
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.	1
Indigenous Peoples deprived of their means of subsistence and development are entitled to just and fair redress.	1

**Theme III: Land and natural resources.**

<b>Theme III - Land and natural resources</b>	
<b>Article Statements</b>	<b>Score</b>
<b>Article 26:</b>	
“Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” “States shall give legal recognition and protection to these lands, territories and resource. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”	
Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.	1
The State gives legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect the customs, traditions and land tenure systems of the indigenous peoples concerned.	1
<b>Article 27:</b>	
“States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”	
State has established and implemented, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.	D/K
Indigenous Peoples participate in the process previously mentioned.	D/K
<b>Article 28:</b>	
“Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” “Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”	
Indigenous Peoples have the right to redress through restitution or compensation for land, territories and resources which they have traditionally owned, occupied or used and have been confiscated without their free, prior and informed consent.	1

Unless otherwise freely agreed upon by the people concerned, compensation takes the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.	D/K
<b>Article 29:</b>	
“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.” “States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.”	
States establish and implement assistance programmes for Indigenous Peoples for conservation and protection of the environment without discrimination	0
States take effective measures to ensure that no storage or disposal of hazardous materials take place in the lands or territories or Indigenous Peoples without their free, prior and informed consent.	D/K
States take effective measures to ensure that programmes for monitoring, maintaining and restoring the health of Indigenous Peoples are developed and implemented by the peoples affected by such materials.	D/K
<b>Article 32:</b>	
“Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.” “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.” “States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”	
Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.	1
The State consults and cooperates 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.	1
States provide effective mechanisms for just and fair redress for any activities, and appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact.	D/K

## Appendix B:

## Content Analysis Data Tables

## Theme I: Consultation and free, prior and informed consent.

I - Consultation and free, prior and informed consent			
Articles of UNDRIP	UNDRIP Article Statements	Country: Canada	
		Score	Evidence
<p><b>Article 18</b></p> <p>Indigenous people have the right to participate in decision-making in matters which would affect their rights with their own representatives and through their own procedures.</p>	<p>Indigenous peoples participate in decision-making in matters which would affect their rights.</p>	1	<p>“In recent years, the federal Government has placed a priority on education, as highlighted by its development of the First Nations Education Bill. However, the bill has been met with remarkably consistent and profound opposition by indigenous peoples across the country. Indigenous leaders have stated that their peoples have not been properly consulted about the bill and that their input had not been adequately incorporated into the drafting of the bill.” (Para. 21, p. 8)</p> <p>“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected “inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations.”</p>

		<p>(Para. 39, p. 13)</p> <p>“...in recent years, indigenous leaders have expressed concern that progress toward [reconciliation] has been undermined by actions of the Government that limit or ignore the input of indigenous governments and representatives in various decisions that concern them. These actions in part sparked in December 2012 the “Idle no More” protests throughout the country.” (Para. 46, p. 14).</p> <p>“Most notable were concerns expressed about a lack of effective participation of indigenous peoples in the design of legislation that affects them. In 2012, the federal Government enacted or amended a number of statutes affecting Canada’s indigenous peoples, including the Canadian Environmental Assessment Act, National Energy Board Act, Fisheries Act, Navigable Waters Protection Act, and the Indian Act, through two “omnibus” budget implementation acts, the Jobs and Growth Act 2012 (Bill C-45) and the Jobs, Growth and Long-term Prosperity Act (Bill C-38). Despite the vast scope and impact on indigenous nations of the omnibus acts, there was no specific consultation with indigenous peoples concerning them.” (Para. 47, p. 15)</p> <p>“Other legislation of concern includes the Safe Drinking Water for First Nations Act, which vests broad power in the federal Government in relation to drinking and waste water systems on First Nations lands. As noted above, indigenous peoples have also complained about a lack of consultation regarding the proposed First Nations Education Act and the Family Homes on Reserve and Matrimonial Interests or Rights Act.” (Para. 48, p. 15)</p> <p>“Also, the unilateral changes to contribution agreements in 2013, without consultation regarding the wording and implications of these new agreements, included language that in other circumstances would appear innocuous, but that language has been widely interpreted by First Nations to imply that receipt of their necessary operating funds was contingent on providing their consent to unspecified future legislative and regulatory changes.” (Para. 49, p. 15)</p> <p>“The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed</p>
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to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed. There appears to be a lack of a consistent framework or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace.” (Para. 71, p. 20)

“Since the passage of the controversial 2012 Jobs, Growth and Long Term Prosperity omnibus legislation, discussed above, fewer projects require federal environmental assessments. When they do occur, they often require indigenous governance institutions – already overburdened with paperwork – to respond within relatively short time frames to what has been described as a “bombardment” of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns. Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue.” (Para 72, p. 20)

“Indigenous representatives made the Special Rapporteur aware of a number of proposed or implemented development projects that they feel pose great risks to their communities and about which they feel their concerns have not been adequately heard, or addressed. These include:

- The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast;
- The Kinder Morgan Trans Mountain pipeline twinning project;
- The New Prosperity open pit gold and copper mine in unceded Tsilhqot’ in traditional territory, which was twice rejected by an environmental assessment panel;
- The Fortune Minerals open-pit coal mine permit, which issued over 16,000 hectares of unceded traditional territory of the Tahltan Nation in British Columbia;
- The Liquid Natural Gas pipeline and drill wells in northern British Columbia in Treaty 8 nations’ traditional territory;
- Site C hydroelectric dam on the Peace River affecting Treaty 8 nations;
- The Athabasca oilsands project, which is contaminating waters used by the downstream Athabasca First Nation;

- The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional territory, in which a lack of prior consultation resulted in bidirectional litigation and the imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI nation;
- Clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake;
- Two proposed hydroelectric dams affecting the Pimicikamak nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands;
- The re-opening of a Hudbay nickel/gold mine in Mathias Columb First Nation traditional territory without consultation with, consent of, or benefits sharing agreement with that nation;
- The construction of the Fairford and Portage Diversion water-control structures, and the 2011 lack of imminent flood protection, flooding, and relocation of Lake St. Martin First Nation;
- Approval of the construction of the Jumbo Glacier Resort in an unceded area of spiritual significance to the Ktunaxa Nation;
- Authorization of forestry operations in Mitchikanibikok Inik (Algonquins of Barriere Lake);
- Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations;
- Seismic testing for natural gas “fracking” extraction in Elsipogtog First Nation traditional territory. “ (Para. 73, p. 20-21).

“There are some positive developments around the duty to consult, primarily at the provincial level. In Ontario, the negotiation of community-specific impact and benefit agreements with resource companies are becoming common and expected by indigenous communities. Ontario has also amended its Mining Act and Green Energy Act to require increased consultation and accommodation to protect aboriginal rights, and notice prior to any mineral claim staking. Manitoba has created a Crown-Aboriginal Consultation Participation Fund to facilitate aboriginal participation in consultations, and is treating its Interim Provincial Policy



			<p>and Guidelines for Crown Consultations as a work in progress pending further feedback and dialogue with aboriginal nations. In Nova Scotia, indigenous nations have worked with the provincial and federal governments to develop terms of reference for consultations. The federal Government is also working with a number of provinces on framework agreements or memoranda to improve the clarity and consistency of consultation processes.” (Para. 75, p. 22)</p> <p>“However, the indigenous representative with whom the Special Rapporteur met expressed concern that, generally speaking, provincial governments do not engage the duty to consult until development proposals have largely taken shape. When consultation happens, resource companies have often already invested in exploration and viability studies, baseline studies are no longer possible, and accommodation of indigenous peoples’ concerns requires a deviation from companies’ plans.” (Para. 76, p. 22)</p>
	<p>In decision-making matters, Indigenous peoples have their own representatives chosen by themselves in accordance with their own procedures.</p>	<p>D/K</p>	<p><i>Insufficient evidence in the report.</i></p>

	<p>Indigenous peoples have the right to maintain and develop their own indigenous decision-making institutions.</p>	<p>D/K</p>	<p><i>Insufficient evidence in the report.</i></p>
<p><b>Article 19</b> The State has a duty to consult with Indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures</p>	<p>The State consults and cooperates in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing</p>	<p>1</p>	<p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004, federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties.” (Para. 7, p. 5)</p> <p>“The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the “honour of the Crown” together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights. The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed</p>

<p>that may affect them.</p>	<p>legislative or administrative measures that may affect them.</p>	<p>to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed. There appears to be a lack of a consistent framework or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace.” (Para. 71, p. 20).</p> <p>“The Federal Government informed the Special Rapporteur that the duty to consult and accommodate in connection with resource development projects can be met through existing processes, such as the environmental assessment process. Since the passage of the controversial 2012 Jobs, Growth and Long Term Prosperity omnibus legislation, discussed above, fewer projects require federal environmental assessments. When they do occur, they often require indigenous governance institutions – already overburdened with paperwork – to respond within relatively short time frames to what has been described as a “bombardment” of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns. Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue.” (Para. 72, p. 20)</p> <p>“Since natural resources on public lands are owned and regarded by provincial governments, while “Indians, and lands reserved for Indians” are a federal jurisdiction, Canada’s duty to consult and, when appropriate, accommodate indigenous peoples with rights and interests over lands where development is proposed implicates both orders of government. As a practical matter, however, it appears that resource companies themselves organize the consultations, where they occur. The federal Government has acknowledged that it lacks a consistent consultation protocol or policy to provide guidance to provinces and companies concerning the level of consultation and forms of accommodation required by the constitutional duty to consult.” (Para. 74, p. 21)</p> <p>“There are some positive developments around the duty to consult, primarily at the provincial level. In Ontario, the negotiation of community-specific impact and benefit agreements with resource companies are becoming common and expected by indigenous communities.</p>
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	<p><b>Total Score</b></p>	<p><b>2/6</b> <b>2 D/Ks</b></p>	<p><b>% score</b></p>	<p><b>33.33%</b></p>

**Theme II: Self-government and self-governance.**

II - Self-government and self-governance			
Articles of UNDRIP	UNDRIP Article Statements	Country: Canada	
		Score	Evidence
<p><b>Article 3</b></p> <p>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</p>	<p>Indigenous peoples have the right to self-determination</p>	1	<p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004,<sup>4</sup> federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties” (Para 7, p. 5).</p> <p>“As noted, the general statute governing registered Indians/First Nations is the Indian Act, which regulates most aspects of aboriginal life and governance on Indian reserves” (Para 8, p. 5).</p> <p>“Notably, Canada recognizes that the inherent right of self-government is an existing aboriginal right under the Constitution, which includes the right of indigenous peoples to govern themselves in matters that are internal to their communities or integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources. This right of self-government includes jurisdiction over the definition of governance structures, First Nation membership, family matters, education, health, and property rights, among other subjects; however, in order to exercise this jurisdiction, agreements must be negotiated with the federal government” (Para</p>

9, p. 5).

“Under the Indian Act the federal Government is responsible for funding education on reserves, which is administered by First Nations governments. The federal Government also funds 110 First Nations and Inuit cultural education centres, which develop culturally relevant curricula. Outside of reserves, education is funded by provincial and territorial governments and administered by local school boards. There are two exceptions. In British Columbia, education for First Nations is coordinated through a single province-wide education authority and delivered and regulated by individual First Nations, which are provided with stable funding through a tripartite agreement with the provincial and federal governments. Also, 11 First Nation bands in Nova Scotia are self-governing in respect of education, under an agreement concluded in 1997” (Para 18, p. 8).

“In recent years, the federal Government has placed a priority on education, as highlighted by its development of the First Nations Education Bill. However, the bill has been met with remarkably consistent and profound opposition by indigenous peoples across the country. Indigenous leaders have stated that their peoples have not been properly consulted about the bill and that their input had not been adequately incorporated into the drafting of the bill. The main concerns expressed by indigenous representatives include that (1) the imposition of provincial standards and service requirements in the bill will undermine or eliminate First Nation control of their children’s education; (2) the bill lacks a clear commitment to First Nations languages, cultures, and ways of teaching and learning; (3) the bill does not provide for stable, adequate, and equitable funding to indigenous schools; and (4) the bill will displace successful education programs already in place, an issue that was raised particularly in British Columbia” (Para. 21, p. 8).

“In a positive development, in February 2014, the Government, supported by the Assembly of First Nations, announced CAN\$1.9 billion in additional education funding starting in 2015, including CAN\$500 million for education infrastructure, and a 4.5 per cent annual “escalator” for core funding, to commence in 2016, in place of the longstanding two per cent cap on funding increases. The Government also affirmed that First Nations will maintain control over education. However, it remains unclear to what extent First Nations were adequately consulted about these developments” (Para. 22, p. 8-9).

“[The overrepresentation of Indigenous people in the prison systems] exists despite notable efforts such as the Aboriginal Courtwork Program (which provides funds to assist aboriginal people in the criminal justice system to obtain equitable and culturally appropriate treatment); the Aboriginal Justice Strategy (which provides aboriginal people with alternatives to the mainstream justice system, where appropriate); the “Gladue principle” (which requires courts to consider reasonable alternatives to incarceration in sentencing of aboriginal people); and the efforts of the Canadian Human Rights Commission to facilitate aboriginal communities’ development of alternative dispute resolution mechanisms. However, more recently, the Government has enacted legislation<sup>19</sup> that limits the judicial discretion upon which these programs rely, raising concerns about the potential for such efforts to reduce the overrepresentation of aboriginal men, women and children in detention” (Para 33, p. 11).

“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected “inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations” (Para 39, p. 13).

“For their part, the Métis, who are not covered by the Indian Act, have started to engage in tripartite negotiations towards self-government agreements in key areas including, family and child care, economic development, and housing, though much still remains to be done to build and fund Métis governance institutions (Para 40, p. 13).

“As for the Inuit regions, two of the four land claim agreements concluded for them contain self-government provisions. The Nunavut Land Claims Agreement (1993) led to the creation of Canada’s newest territory and public government in 1999. The Nunatsiavut- Labrador Inuit Land Claims Agreement (2005) led to the establishment of the Nunatsiavut Government, which has the powers to pass laws concerning education, health, and cultural affairs. Agreements in the two other Inuit areas remain outstanding. In Nunavik, Makivik Corporation (representing the Inuit of Quebec), the government of Quebec and Canada negotiated a final self-government agreement to establish a regional public government responsible to deliver certain social services such as education and health. However, voters in Nunavik rejected the agreement in April 2011, and efforts towards a self-government agreement are ongoing. In 1996, the Inuvialuit Regional Council, in concert with the Gwich’in Tribal Council, commenced self-government negotiations with Canada and the Government of the Northwest Territories, with which they envisioned the operation of a regional public government structure, combined with a system of guaranteed aboriginal representation on the councils of restructured community public governments. An agreement-in-principle was reached in April 2003 but was later rejected by the Gwich’in Tribal Council. The two groups have subsequently resumed negotiating at separate tables on separate agreements” (Para 41, p. 13).

“Federal funding for First Nations governments under the Indian Act is structured through “contribution agreements” for which they must apply. Funding priorities and amounts are unilaterally, and some say arbitrarily, determined by the federal Government. Spending is monitored and reviewed to ensure that conditions the Government imposes are met, and funds are withheld if audits are not delivered on time – which forces indigenous governments to reallocate available funds to ensure programming continuity, making reporting even more difficult” (Para 42, p. 13-14).

“Furthermore, if a First Nation government functioning under the Indian Act has financial difficulties as a result of funding delays, reporting delays or other situations, it faces the potential imposition of a co-manager or federally-appointed third party manager who takes over control of all the nation’s federally funded programs and services. There do not appear to be significant financial management resources available from the federal Government for



First Nations, at their own request, before they are in a default or deficit position. There is clearly a perception among indigenous leaders that third party management can be imposed for punitive or political reasons” (Para 43, p. 14).

“The Special Rapporteur heard criticisms over the relatively new “own-source revenue” policy, which will likely be phased in to all funding agreements between the federal Government and First Nations. Under this policy, First Nations will be expected, as they are able and over time, to contribute to the costs of their government activities, with the expectation that indigenous reliance on federal funding will decline. Specifically, aboriginal representatives have expressed the feeling that they are being “punished” when they demonstrate success, in the sense that their funding will be reduced” (Para 45, p. 14).

“Most notable were concerns expressed about a lack of effective participation of indigenous peoples in the design of legislation that affects them. In 2012, the federal Government enacted or amended a number of statutes affecting Canada’s indigenous peoples, including the Canadian Environmental Assessment Act, National Energy Board Act, Fisheries Act, Navigable Waters Protection Act, and the Indian Act, through two “omnibus” budget implementation acts, the Jobs and Growth Act 2012 (Bill C-45) and the Jobs, Growth and Long-term Prosperity Act (Bill C-38). Despite the vast scope and impact on indigenous nations of the omnibus acts, there was no specific consultation with indigenous peoples concerning them” (Para 47, p. 15).

“Other legislation of concern includes the Safe Drinking Water for First Nations Act, which vests broad power in the federal Government in relation to drinking and waste water systems on First Nations lands. As noted above, indigenous peoples have also complained about a lack of consultation regarding the proposed First Nations Education Act and the Family Homes on Reserve and Matrimonial Interests or Rights Act” (Para 48, p. 15).

“In addition, there have been a number of actions in recent years that have been viewed as affronting the aspired to partnership relationship between First Nations and the Government. For example, the prioritization of the First Nations Financial Transparency Act, in a context in which indigenous governments are already the most over-reporting level of government, has been perceived by First Nations to reinforce a negative stereotype of aboriginal people

and governments as incompetent and corrupt, and to undermine rather than promote public support for indigenous self-government. Also, the unilateral changes to contribution agreements in 2013, without consultation regarding the wording and implications of these new agreements, included language that in other circumstances would appear innocuous, but that language has been widely interpreted by First Nations to imply that receipt of their necessary operating funds was contingent on providing their consent to unspecified future legislative and regulatory changes” (Para 49, p. 15).

“Another example of actions that have strained the relationship between indigenous peoples and the Government is the international border arrangement put in place for the Akwesasne reserve, which spans the Canada and United State border, after the community objected to border guards carrying firearms on their reserve. Since the border station was moved, Mohawk residents of the reserve traveling entirely within their own territory but across the international boundary are required to leave their reserve and report to border services at the station. Failure to report in this manner may result in onerous fines, confiscation of vehicles, and in some cases imprisonment. Mohawk residents perceive this arrangement as a punitive measure in response to the community’s activism” (Para 50, p. 15).

“A key issue that affects the self-governance capacity of First Nations is the Indian Act definition of who qualifies as a “status” or “registered” Indian. Like other Canadians, First Nations individuals have often built families with partners from different backgrounds. Unlike for other Canadians, however, for many First Nations individuals, doing so carries serious consequences for their children’s ability to stay in their community as adults. This in turn has significant consequences for First Nations’ ability to retain diverse economic skills, since those most likely to “marry out” are those who have lived outside the community to gain education or experience” (Para 52, p. 16).

“While the Indian Act permits First Nations the option of making their own membership rules, many benefits follow statutorily defined-status under the Indian Act, not membership. These include on-reserve tax exemptions, estate rules, certain payments, and post-secondary education support, and perhaps most importantly, federally funded on- reserve housing. This makes it difficult in practice for First Nations to enable non-status members to live on reserve, including children who have grown up on reserve and know no other home” (Para

53, p. 16)

“These distinctions, compounded by two levels of status under the Indian Act, have the practical effect of imposing different classes of First Nation citizenship, within a convoluted regulatory matrix, regardless of the criteria or collective decisions of the First Nation. To simplify, under the Indian Act, 6(1) status is accorded to children with two status Indian parents (or to children with a status Indian father and a white mother who were married prior to 1985); individuals with 6(1) status pass on status to their children. Children with only one 6(1) status parent are accorded 6(2) status, which means they do not have the right to pass Indian status to their children unless their child’s other parent has either 6(1) or 6(2) status” (Para 54, p. 16).

“The enactment of the Gender Equity in Indian Registration Act remediated some of the ongoing discriminatory effects of historical provisions that revoked the Indian status of women – and all their descendants – who married non-status men, while granting status to non-aboriginal women - and their descendants - who married status Indians. Unfortunately, as acknowledged by the Senate Standing Committee on Human Rights, this legislation did “not deal with all sex discrimination stemming from the Indian Act”;<sup>25</sup> some classes of people continue to be excluded from status on the basis of the historic discrimination against matrilineal descent. This two-parent rule is the context for another problematic policy regarding unstated paternity, which arises if the child is a product of violence, rape, or incest, cases in which the need to obtain proof of status from the father places the mother at risk. Under this policy, any father who is not identified in the birth registration of an infant is presumed not to be a registered Indian unless the mother provides sworn proof from the father or his family acknowledging paternity” (Para 55, p. 16).

“Métis membership is not defined under the Indian Act or other legislation. Facing objections by the Government that it was not possible to identify members of the Métis community, the Supreme Court has concluded that identity is demonstrated where a person has an ancestral connection to the community, self-identifies as a member, and is accepted as such by the community. This approach has been lauded for allowing for more flexibility and indigenous control over membership” (Para 56, p. 17).

“Inuit membership lists are maintained by each of the four beneficiary organizations in Canada (Inuvialuit Regional Corporation, Nunavut Tunngavik Incorporated, Makivik Corporation, and the Nunatsiavut Government). In each case, they establish their own criteria but it is generally based on ancestry and self-identification as an Inuk” (Para 57, p. 17).

“An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements” (Para 62, p. 18).

“The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the “honour of the Crown” together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights.<sup>30</sup> The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed. There appears to be a lack of a consistent framework or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace” (Para 71, p. 20).

“Indigenous representatives made the Special Rapporteur aware of a number of proposed or implemented development projects that they feel pose great risks to their communities and about which they feel their concerns have not been adequately heard, or addressed. These include:

- The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast;

- The Kinder Morgan Trans Mountain pipeline twinning project;
- The New Prosperity open pit gold and copper mine in unceded Tsilhqot'in traditional territory, which was twice rejected by an environmental assessment panel;
- The Fortune Minerals open-pit coal mine permit, which issued over 16,000 hectares of unceded traditional territory of the Tahltan Nation in British Columbia;
- The Liquid Natural Gas pipeline and drill wells in northern British Columbia in Treaty 8 nations' traditional territory;
- Site C hydroelectric dam on the Peace River affecting Treaty 8 nations;
- The Athabasca oilsands project, which is contaminating waters used by the downstream Athabasca First Nation;
- The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional territory, in which a lack of prior consultation resulted in bidirectional litigation and the imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI nation;
- Clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake;
- Two proposed hydroelectric dams affecting the Pimicikamak nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands;
- The re-opening of a Hudbay nickel/gold mine in Mathias Columb First Nation traditional territory without consultation with, consent of, or benefits sharing agreement with that nation;
- The construction of the Fairford and Portage Diversion water-control structures, and the 2011 lack of imminent flood protection, flooding, and relocation of Lake St. Martin First Nation;
- Approval of the construction of the Jumbo Glacier Resort in an unceded area of spiritual significance to the Ktunaxa Nation;
- Authorization of forestry operations in Mitchikanibikok Inik (Algonquins of Barriere Lake);
- Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations;

		<ul style="list-style-type: none"> <li>• Seismic testing for natural gas “fracking” extraction in Elsipogtog First Nation traditional territory.” (Para 73, p. 20-21)</li> </ul> <p>“Since natural resources on public lands are owned and regulated by provincial governments, while “Indians, and lands reserved for Indians” are a federal jurisdiction, Canada’s duty to consult and, when appropriate, accommodate indigenous peoples with rights and interests over lands where development is proposed implicates both orders of government” (Para 74, p. 21).</p>
Indigenous peoples freely determine their political status.	D/K	<i>Insufficient evidence in the report.</i>
Indigenous peoples freely pursue their economic, social and cultural development.	1	<p>“Healthcare for aboriginal people in Canada is delivered through a complex array of federal, provincial and aboriginal services, and concerns have been raised about the adequacy of coordination among these. A recent positive development in British Columbia, which could provide a model for other areas, is the 2013 implementation of a tripartite agreement to achieve a more responsive health cares system. The oversight and delivery of federally funded health services in British Columbia have been transferred to First Nations, while the three levels of government (First Nations, provincial and federal) work collaboratively to support integration and accountability” (Para 30, p. 10).</p> <p>“The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by- sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in</p>

accordance with the constitutionally protected “inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations” (Para 39, p. 13).

“For their part, the Métis, who are not covered by the Indian Act, have started to engage in tripartite negotiations towards self-government agreements in key areas including, family and child care, economic development, and housing, though much still remains to be done to build and fund Métis governance institutions” (Para 40, p. 13).

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“Federal funding for First Nations governments under the Indian Act is structured through “contribution agreements” for which they must apply. Funding priorities and amounts are unilaterally, and some say arbitrarily, determined by the federal Government. Spending is

			<p>monitored and reviewed to ensure that conditions the Government imposes are met, and funds are withheld if audits are not delivered on time – which forces indigenous governments to reallocate available funds to ensure programming continuity, making reporting even more difficult” (Para 42, p. 13-14).</p> <p>“Furthermore, if a First Nation government functioning under the Indian Act has financial difficulties as a result of funding delays, reporting delays or other situations, it faces the potential imposition of a co-manager or federally-appointed third party manager who takes over control of all the nation’s federally funded programs and services. There do not appear to be significant financial management resources available from the federal Government for First Nations, at their own request, before they are in a default or deficit position. There is clearly a perception among indigenous leaders that third party management can be imposed for punitive or political reasons” (Para 43, p. 14).</p> <p>“The Special Rapporteur heard criticisms over the relatively new “own-source revenue” policy, which will likely be phased in to all funding agreements between the federal Government and First Nations. Under this policy, First Nations will be expected, as they are able and over time, to contribute to the costs of their government activities, with the expectation that indigenous reliance on federal funding will decline. Specifically, aboriginal representatives have expressed the feeling that they are being “punished” when they demonstrate success, in the sense that their funding will be reduced” (Para 45, p. 14).</p>
<p><b>Article 4</b></p> <p>Indigenous peoples, in exercising their right to self-determination, have the right to</p>	<p>Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-</p>	<p>1</p>	<p>“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected</p>



<p>autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</p>	<p>government in matters relating to their internal and local affairs.</p>	<p>“inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations” (Para 39, p. 13).</p> <p>“For their part, the Métis, who are not covered by the Indian Act, have started to engage in tripartite negotiations towards self-government agreements in key areas including, family and child care, economic development, and housing, though much still remains to be done to build and fund Métis governance institutions” (Para 40, p. 13).</p> <p>“As for the Inuit regions, two of the four land claim agreements concluded for them contain self-government provisions. The Nunavut Land Claims Agreement (1993) led to the creation of Canada’s newest territory and public government in 1999. The Nunatsiavut- Labrador Inuit Land Claims Agreement (2005) led to the establishment of the Nunatsiavut Government, which has the powers to pass laws concerning education, health, and cultural affairs. Agreements in the two other Inuit areas remain outstanding. In Nunavik, Makivik Corporation (representing the Inuit of Quebec), the government of Quebec and Canada negotiated a final self-government agreement to establish a regional public government responsible to deliver certain social services such as education and health. However, voters in Nunavik rejected the agreement in April 2011, and efforts towards a self-government agreement are ongoing. In 1996, the Inuvialuit Regional Council, in concert with the Gwich’in Tribal Council, commenced self-government negotiations with Canada and the Government of the Northwest Territories, with which they envisioned the operation of a regional public government structure, combined with a system of guaranteed aboriginal representation on the councils of restructured community public governments. An agreement-in-principle was reached in April 2003 but was later rejected by the Gwich’in Tribal Council. The two groups have subsequently resumed negotiating at separate tables on separate agreements” (Para 41, p. 13).</p>
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<p>Indigenous peoples have ways and means for financing their autonomous functions.</p>	<p>D/K</p>	<p>“The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land.” (Para 39, p. 13).</p> <p>“Federal funding for First Nations governments under the Indian Act is structured through “contribution agreements” for which they must apply. Funding priorities and amounts are unilaterally, and some say arbitrarily, determined by the federal Government. Spending is monitored and reviewed to ensure that conditions the Government imposes are met, and funds are withheld if audits are not delivered on time – which forces indigenous governments to reallocate available funds to ensure programming continuity, making reporting even more difficult” (Para 42, p. 13-14).</p> <p>“Furthermore, if a First Nation government functioning under the Indian Act has financial difficulties as a result of funding delays, reporting delays or other situations, it faces the potential imposition of a co-manager or federally-appointed third party manager who takes over control of all the nation’s federally funded programs and services. There do not appear to be significant financial management resources available from the federal Government for First Nations, at their own request, before they are in a default or deficit position. There is clearly a perception among indigenous leaders that third party management can be imposed for punitive or political reasons” (Para 43, p. 14).</p> <p>“The Special Rapporteur heard criticisms over the relatively new “own-source revenue” policy, which will likely be phased in to all funding agreements between the federal Government and First Nations. Under this policy, First Nations will be expected, as they are able and over time, to contribute to the costs of their government activities, with the expectation that indigenous reliance on federal funding will decline. Specifically, aboriginal representatives have expressed the feeling that they are being “punished” when they demonstrate success, in the sense that their funding will be reduced” (Para 45, p. 14).</p> <p style="text-align: center;"><i>Insufficient Evidence in Report</i></p>
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<p><b>Article 5</b></p> <p>Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state.</p>	<p>Indigenous peoples have the right to maintain and strengthen their distinct political, economic, and social systems or institutions.</p>	<p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004, federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties” (Para 7, p. 4).</p> <p>1 “...Canada recognizes that the inherent right of self-government is an existing aboriginal right under the Constitution, which includes the right of indigenous peoples to govern themselves in matters that are internal to their communities or integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources. This right of self-government includes jurisdiction over the definition of governance structures, First Nation membership, family matters, education, health, and property rights, among other subjects; however, in order to exercise this jurisdiction, agreements must be negotiated with the federal government” (Para 9, p. 5).</p> <p>“In recent years, the federal Government has placed a priority on education, as highlighted by its development of the First Nations Education Bill. However, the bill has been met with remarkably consistent and profound opposition by indigenous peoples across the country. Indigenous leaders have stated that their peoples have not been properly consulted about the bill and that their input had not been adequately incorporated into the drafting of the bill. The main concerns expressed by indigenous representatives include that (1) the imposition of provincial standards and service requirements in the bill will undermine or eliminate First Nation control of their children’s education; (2) the bill lacks a clear commitment to First</p>
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		<p>Nations languages, cultures, and ways of teaching and learning; (3) the bill does not provide for stable, adequate, and equitable funding to indigenous schools; and (4) the bill will displace successful education programs already in place, an issue that was raised particularly in British Columbia” (Para 21, p. 8).</p> <p>“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected “inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law- making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations” (Para 39, p. 13).</p> <p>“As for the Inuit regions, two of the four land claim agreements concluded for them contain self-government provisions. The Nunavut Land Claims Agreement (1993) led to the creation of Canada’s newest territory and public government in 1999. The Nunatsiavut- Labrador Inuit Land Claims Agreement (2005) led to the establishment of the Nunatsiavut Government, which has the powers to pass laws concerning education, health, and cultural affairs. Agreements in the two other Inuit areas remain outstanding” (Para 41, p. 13).</p>
	<p>Indigenous peoples have the right to participate</p>	<p>D/K</p> <p>“A key issue that affects the self-governance capacity of First Nations is the Indian Act definition of who qualifies as a “status” or “registered” Indian. Like other Canadians, First Nations individuals have often built families with partners from different backgrounds. Unlike for other Canadians, however, for many First Nations individuals, doing so carries</p>

	<p>fully, if they so choose, in the political, economic, social and cultural life of the State.</p>		<p>serious consequences for their children’s ability to stay in their community as adults. This in turn has significant consequences for First Nations’ ability to retain diverse economic skills, since those most likely to “marry out” are those who have lived outside the community to gain education or experience” (Para 52, p. 16).</p> <p style="text-align: center;"><i>Insufficient evidence in the report.</i></p>
<p><b>Article 20</b> Indigenous peoples have the right to maintain and develop their political, economic and social 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</p>	<p>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.</p>	<p style="text-align: center;">1</p>	<p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004, federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties” (Para 7, p. 5).</p> <p>“...Canada recognizes that the inherent right of self-government is an existing aboriginal right under the Constitution, which includes the right of indigenous peoples to govern themselves in matters that are internal to their communities or integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources. This right of self-government includes jurisdiction over the definition of governance structures, First Nation membership, family matters, education, health, and property rights, among other subjects; however, in order to exercise this jurisdiction, agreements must be negotiated with the federal government” (Para 9, p. 5).</p> <p>“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective</p>

<p>activities." "Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.</p>			<p>exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected “inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations” (Para 39, p. 13).</p> <p>“Federal funding for First Nations governments under the Indian Act is structured through “contribution agreements” for which they must apply. Funding priorities and amounts are unilaterally, and some say arbitrarily, determined by the federal Government. Spending is monitored and reviewed to ensure that conditions the Government imposes are met, and funds are withheld if audits are not delivered on time – which forces indigenous governments to reallocate available funds to ensure programming continuity, making reporting even more difficult” (Para 42, p. 13-14).</p> <p>“Furthermore, if a First Nation government functioning under the Indian Act has financial difficulties as a result of funding delays, reporting delays or other situations, it faces the potential imposition of a co-manager or federally-appointed third party manager who takes over control of all the nation’s federally funded programs and services. There do not appear to be significant financial management resources available from the federal Government for First Nations, at their own request, before they are in a default or deficit position. There is clearly a perception among indigenous leaders that third party management can be imposed for punitive or political reasons” (Para 43, p. 14).</p>
	<p>Indigenous</p>	<p>1</p>	<p>“Apart from modern treaty making to comprehensively settle land claims is the specific claims process, which provides redress for historic grievances arising out of historic treaties</p>

<p>Peoples deprived of their means of subsistence and development are entitled to just and fair redress.</p>	<p>and settlements already reached through negotiations or binding decisions of the Specific Claims Tribunal. The specific claims process includes a so-called Treaty Lands Entitlement mechanism, a procedure for settling land debt owed to First Nations that did not receive all of the land to which they were entitled under historic treaties. In particular, Treaty Lands Entitlement is significantly enhancing the land base of many First Nations, addressing a recommendation made by the previous Special Rapporteur in 2004” (Para 60, p. 17).</p> <p>“Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements” (Para 62, p. 18).</p> <p>“The Government also tends to treat litigation and negotiation as mutually exclusive options, instead of complementary avenues toward a mutual goal in which negotiations may proceed on some issues while the parties seek assistance from the courts concerning intractable disagreements. Furthermore, the Government’s stated objective of “full and final certainty” with respect to rights burdens the negotiation process with the almost impossible requirement of being totally comprehensive and anticipating all future circumstances. The federal government has acknowledged that it is out of step with the provinces on this point and is reportedly contemplating changing course to allow interim or partial agreements, which is a hopeful sign” (Para 63, p. 18).</p> <p>“The costs for all of the parties involved are enormous. Outstanding loans to First Nations from Canada in support of their participation in the comprehensive land claims negotiations total in excess of CAN\$700 million. These loans remain owing even if a government party discontinues the negotiations. Nor is litigation between Canada or its provinces and indigenous peoples more economical or efficient. For example, the Tshilhqot’in Nation’s</p>
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		<p>aboriginal title litigation has cost the nation more than CAN\$15 million, and taken 14 years to pursue, including five years of trial, and the case is currently under appeal to the Supreme Court of Canada. Also, the Nuu-chah-nulth nation’s litigation over a commercial aboriginal right to fish has taken 12 years, including three years of trial and successive appeals. In the meantime, the Nuu-chah-nulth have been permitted to access very little of the fishery” (Para 64, p. 18).</p> <p>“Finally, an important impact of the delay in treaty and claims negotiations is the growing conflict and uncertainty over resource development on lands subject to ongoing claims. It is understandable that First Nations who see the lands and resources over which they are negotiating being turned into open pit mines or drowned by a dam would begin to question the utility of the process. For example, four indigenous nations in the Treaty 8 territory in British Columbia have been in Treaty Land Entitlement negotiations for a decade, for ‘so long that there are almost no available lands left for the First Nations to select’” (Para 65, p. 18-19).</p>		
	<b>Total Score</b>	<b>6 / 18</b> <b>3 D/K</b>	<b>% Score</b>	<b>33.33%</b>



**Theme III: Land and natural resources.**

III - Land and natural resources			
Articles of UNDRIP	Statements	Country: Canada	
		Score	Evidence
<b>Article 26</b>  <b>Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."</b> <b>"Indigenous peoples have the right to own, use, develop and control the lands, territories and</b>	Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.	1	<p>“Canada’s relationship with the indigenous peoples within its borders is governed by a well-developed legal framework that in many respects is protective of indigenous peoples’ rights. Building upon the protections in the British Crown’s Royal Proclamation of 1763, Canada’s 1982 Constitution was one of the first in the world to enshrine indigenous peoples’ rights, recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit, and Métis people of Canada. These provisions protect aboriginal title arising from historic occupation, treaty rights, and culturally important activities” (Para 6, p. 5).</p> <p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004, federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties” (Para 7, p. 5).</p> <p>“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative</p>

<p><b>resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired." "States shall give legal recognition and protection to these lands, territories and resource. Such recognition shall be conducted with due respect to the customs,</b></p>	<p>alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected "inherent right" of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations" (Para 39, p. 13).</p> <p>"Modern treaties, also referred to as comprehensive land claims agreements, deal with areas over which indigenous peoples' have claims that have not been addressed through historic treaties or other legal means. Since 1973, twenty-four comprehensive land claims agreements have been concluded and are in effect. These cover approximately 40% of Canada's land mass and affect 95 indigenous communities.<sup>27</sup> At the provincial level, the British Columbia Treaty Process was established in 1993 to resolve outstanding claims to lands and resources in the province, and has resulted in two final agreements that have come into effect; the Government reports that two more are very close to taking effect" (Para 59, p. 17).</p> <p>"Apart from modern treaty making to comprehensively settle land claims is the specific claims process, which provides redress for historic grievances arising out of historic treaties and settlements already reached through negotiations or binding decisions of the Specific Claims Tribunal. The specific claims process includes a so-called Treaty Lands Entitlement mechanism, a procedure for settling land debt owed to First Nations that did not receive all of the land to which they were entitled under historic treaties. In particular, Treaty Lands Entitlement is significantly enhancing the land base of many First Nations, addressing a recommendation made by the previous Special Rapporteur in 2004 (Para 60, p. 17).</p> <p>"Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes</p>
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<p><b>traditions and land tenure systems of the indigenous peoples concerned.</b></p>	<p>or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements” (Para 62, p. 18).</p> <p>“Even for those First Nations that achieve an agreement despite these challenges, implementation has proven to be difficult. The vast majority of the country’s territory was constituted through historic (pre-1975) treaties with First Nations, which for many First Nations form a core aspect of their identity and relationship with Canada. Given their constitutional implications, these treaties should have a similar significance for other Canadians, yet treaty litigation forms 25-30% of the Department of Justice’s inventory of cases, according to information provided by the Government to the Special Rapporteur. There are similar problems with implementation of court judgments affirming aboriginal rights. Poor implementation of existing rights and treaties is hardly a strong motivator for concluding new ones” (Para 66, p. 19).</p> <p>“It bears mentioning that, in spite of recent judicial affirmation that the Métis had not been provided the lands they were owed under the letter and spirit of the constitutional agreement that created Manitoba,<sup>29</sup> the Government does not appear to have a coherent process or policy in place to address the land and compensation claims of the Métis people” (Para 68, p. 19).</p> <p>“The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the “honour of the Crown” together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights.<sup>30</sup> The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed. There appears to be a lack of a consistent framework</p>
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		<p>or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace” (Para 71, p. 20).</p> <p>“However, the indigenous representative with whom the Special Rapporteur met expressed concern that, generally speaking, provincial governments do not engage the duty to consult until development proposals have largely taken shape. When consultation happens, resource companies have often already invested in exploration and viability studies, baseline studies are no longer possible, and accommodation of indigenous peoples’ concerns requires a deviation from companies’ plans. The Special Rapporteur notes that this situation creates an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans” (Para 76, p. 22).</p>
<p>The State gives legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect the customs, traditions and land tenure systems of the indigenous peoples</p>	<p>1</p>	<p>“Building upon the protections in the British Crown’s Royal Proclamation of 1763, Canada’s 1982 Constitution was one of the first in the world to enshrine indigenous peoples’ rights, recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit, and Métis people of Canada. These provisions protect aboriginal title arising from historic occupation, treaty rights, and culturally important activities” (Para 6, p. 5).</p> <p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004, federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties” (Para 7, p. 5).</p>

	concerned.	<p>“Yet, many of Canada’s laws, in particular the Indian Act, still do not permit the effective exercise of indigenous self-government. The Indian Act renders almost all decisions made by a First Nations government subject to the approval of the Minister of Aboriginal Affairs and Northern Development, including changes in band by-laws, funding for reserve programs and infrastructure, and the leasing of land. Most glaringly, while there are some legislative alternatives to First Nations to opt out of the Indian Act regime on a case-by-case, sector-by-sector basis, these options are limited. The principal alternative is through self-government agreements, which can be negotiated to enhance greater indigenous control and law-making authority over a range of jurisdictions, including social and economic development, education, health lands and other matters, in accordance with the constitutionally protected “inherent right” of self-government. Another alternative is in the First Nations Land Management Act, which gives participating First Nations law-making authority over the lands in their reserve and allows them to implement their own land management systems. However the Indian Act remains the default and still prevalent regime among First Nations” (Para 39, p. 13).</p> <p>“...in spite of recent judicial affirmation that the Métis had not been provided the lands they were owed under the letter and spirit of the constitutional agreement that created Manitoba, the Government does not appear to have a coherent process or policy in place to address the land and compensation claims of the Métis people” (Para 68, p. 19).</p> <p>“The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the “honour of the Crown” together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights.<sup>30</sup> The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed. There appears to be a lack of a consistent framework or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic</p>
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			<p>development nor social peace” (Para 71, p. 20).</p> <p>“However, the indigenous representative with whom the Special Rapporteur met expressed concern that, generally speaking, provincial governments do not engage the duty to consult until development proposals have largely taken shape. When consultation happens, resource companies have often already invested in exploration and viability studies, baseline studies are no longer possible, and accommodation of indigenous peoples’ concerns requires a deviation from companies’ plans. The Special Rapporteur notes that this situation creates an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans” (Para 76, p. 22).</p>
<p><b>Article 27</b>  <b>States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to</b></p>	<p>State has established and implemented, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples’ laws, traditions, customs and</p>	<p>D/K</p>	<p>“Building upon the protections in the British Crown’s Royal Proclamation of 1763, Canada’s 1982 Constitution was one of the first in the world to enshrine indigenous peoples’ rights, recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit, and Métis people of Canada. These provisions protect aboriginal title arising from historic occupation, treaty rights, and culturally important activities” (Para 6, p. 5).</p> <p>“Since 1982, Canada’s courts have developed a significant body of jurisprudence concerning aboriginal and treaty rights. In 1997, the seminal case of <i>Delgamuukw v. British Columbia</i> established aboriginal title as a proprietary right in the land grounded in occupation at the time of British assertion of sovereignty, which may only be infringed for public purposes with fair compensation and consultation, although in neither that nor any subsequent case has a declaration of aboriginal title been granted. Numerous cases have affirmed aboriginal rights to fishing, hunt, and access lands for cultural and economic purposes. Furthermore, since the <i>Haida Nation v. British Columbia</i> case in 2004, federal and provincial governments have been subject to a formal duty to consult indigenous peoples and accommodate their interests whenever their asserted or established aboriginal or treaty rights may be affected by government conduct. Further jurisprudence confirms that treaties reached cannot be unilaterally abrogated and must be interpreted in accordance with the understanding of the indigenous parties” (Para 7, p. 5).</p> <p>“Apart from modern treaty making to comprehensively settle land claims is the specific</p>

<p><b>indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this</b></p>	<p>land tenure systems, to recognize and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.</p>	<p>claims process, which provides redress for historic grievances arising out of historic treaties and settlements already reached through negotiations or binding decisions of the Specific Claims Tribunal. The specific claims process includes a so-called Treaty Lands Entitlement mechanism, a procedure for settling land debt owed to First Nations that did not receive all of the land to which they were entitled under historic treaties. In particular, Treaty Lands Entitlement is significantly enhancing the land base of many First Nations, addressing a recommendation made by the previous Special Rapporteur in 2004” (Para 60, p. 17).</p> <p>“Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements” (Para 62, p. 18).</p> <p>“The Government also tends to treat litigation and negotiation as mutually exclusive options, instead of complementary avenues toward a mutual goal in which negotiations may proceed on some issues while the parties seek assistance from the courts concerning intractable disagreements. Furthermore, the Government’s stated objective of “full and final certainty” with respect to rights burdens the negotiation process with the almost impossible requirement of being totally comprehensive and anticipating all future circumstances. The federal government has acknowledged that it is out of step with the provinces on this point and is reportedly contemplating changing course to allow interim or partial agreements, which is a hopeful sign” (Para 63, p. 18).</p> <p>“The costs for all of the parties involved are enormous. Outstanding loans to First Nations from Canada in support of their participation in the comprehensive land claims negotiations total in excess of CAN\$700 million. These loans remain owing even if a government party discontinues the negotiations. Nor is litigation between Canada or its provinces and</p>
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<p><b>process.</b></p>		<p>indigenous peoples more economical or efficient. For example, the Tshilhqot'in Nation's aboriginal title litigation has cost the nation more than CAN\$15 million, and taken 14 years to pursue, including five years of trial, and the case is currently under appeal to the Supreme Court of Canada. Also, the Nuu-chah-nulth nation's litigation over a commercial aboriginal right to fish has taken 12 years, including three years of trial and successive appeals. In the meantime, the Nuu-chah-nulth have been permitted to access very little of the fishery" (Para 64, p. 18).</p> <p>"Finally, an important impact of the delay in treaty and claims negotiations is the growing conflict and uncertainty over resource development on lands subject to ongoing claims. It is understandable that First Nations who see the lands and resources over which they are negotiating being turned into open pit mines or drowned by a dam would begin to question the utility of the process. For example, four indigenous nations in the Treaty 8 territory in British Columbia have been in Treaty Land Entitlement negotiations for a decade, for 'so long that there are almost no available lands left for the First Nations to select'" (Para 65, p. 18-19).</p> <p style="text-align: center;"><i>Insufficient Evidence in Report</i></p>
	<p>Indigenous Peoples participate in the process previously mentioned.</p>	<p>D/K</p> <p>"Apart from modern treaty making to comprehensively settle land claims is the specific claims process, which provides redress for historic grievances arising out of historic treaties and settlements already reached through negotiations or binding decisions of the Specific Claims Tribunal. The specific claims process includes a so-called Treaty Lands Entitlement mechanism, a procedure for settling land debt owed to First Nations that did not receive all of the land to which they were entitled under historic treaties. In particular, Treaty Lands Entitlement is significantly enhancing the land base of many First Nations, addressing a recommendation made by the previous Special Rapporteur in 2004" (Para 60, p. 17).</p> <p>"Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes</p>



			<p>or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements” (Para 62, p. 18).</p> <p>“The Government also tends to treat litigation and negotiation as mutually exclusive options, instead of complementary avenues toward a mutual goal in which negotiations may proceed on some issues while the parties seek assistance from the courts concerning intractable disagreements. Furthermore, the Government’s stated objective of “full and final certainty” with respect to rights burdens the negotiation process with the almost impossible requirement of being totally comprehensive and anticipating all future circumstances. The federal government has acknowledged that it is out of step with the provinces on this point and is reportedly contemplating changing course to allow interim or partial agreements, which is a hopeful sign” (Para 63, p. 18).</p> <p style="text-align: center;"><i>Insufficient Evidence in Report</i></p>
<p><b>Article 28</b> <b>Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair</b></p>	<p>Indigenous Peoples have the right to redress through restitution or compensation for land, territories and resources which they have traditionally</p>	<p>1</p>	<p>“Many negotiations under these procedures have been ongoing for many years, in some cases decades, with no foreseeable end. An overarching concern is that the Government appears to view the overall interests of Canadians as adverse to aboriginal interests, rather than encompassing them. In the comprehensive land claims processes, the Government minimizes or refuses to recognize aboriginal rights, often insisting on the extinguishment or non-assertion of aboriginal rights and title, and favours monetary compensation over the right to, or return of, lands. In litigation, the adversarial approach leads to an abundance of pre-trial motions, which requires the indigenous claimants to prove nearly every fact, including their very existence as a people. The often limited negotiating mandates of Government representatives have also delayed or stymied progress toward agreements” (Para 62, p. 18).</p>

<p><b>and equitable compensation, for the lands, territories and resources which they have</b></p>	<p>owned, occupied or used and have been confiscated without their free, prior and informed consent.</p>		
<p><b>traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." "Unless otherwise freely agreed upon by the peoples</b></p>	<p>Unless otherwise freely agreed upon by the people concerned, compensation takes the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p>	<p>D/K</p>	<p><i>Insufficient Evidence in Report</i></p>

<p><b>concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress</b></p>			
<p><b>Article 29</b> Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories</p>	<p>States establish and implement assistance programmes for Indigenous Peoples for conservation and protection of the environment without discrimination</p>	<p>0</p>	<p>“In 2012, the federal Government enacted or amended a number of statutes affecting Canada’s indigenous peoples, including the Canadian Environmental Assessment Act, National Energy Board Act, Fisheries Act, Navigable Waters Protection Act, and the Indian Act, through two “omnibus” budget implementation acts, the Jobs and Growth Act 2012 (Bill C-45) and the Jobs, Growth and Long-term Prosperity Act (Bill C-38). Despite the vast scope and impact on indigenous nations of the omnibus acts, there was no specific consultation with indigenous peoples concerning them” (Para 47, p. 15).</p> <p>“Other legislation of concern includes the Safe Drinking Water for First Nations Act, which vests broad power in the federal Government in relation to drinking and waste water systems on First Nations lands. As noted above, indigenous peoples have also complained about a lack of consultation regarding the proposed First Nations Education Act and the Family Homes on Reserve and Matrimonial Interests or Rights Act” (Para 48, p. 15).</p> <p>“One of the most dramatic contradictions indigenous peoples in Canada face is that so many live in abysmal conditions on traditional territories that are full of valuable and plentiful</p>

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

natural resources. These resources are in many cases targeted for extraction and development by non-indigenous interests. While indigenous peoples potentially have much to gain from resource development within their territories, they also face the highest risks to their health, economy, and cultural identity from any associated environmental degradation. Perhaps more importantly, indigenous nations' efforts to protect their long-term interests in lands and resources often fit uneasily into the efforts by private non-indigenous companies, with the backing of the federal and provincial governments, to move forward with natural resource projects" (Para 69, p. 19).

"The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the "honour of the Crown" together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights.<sup>30</sup> The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed. There appears to be a lack of a consistent framework or policy for the implementation of this duty to consult, which is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace" (Para 71, p. 20).

"Since the passage of the controversial 2012 Jobs, Growth and Long Term Prosperity omnibus legislation, discussed above, fewer projects require federal environmental assessments. When they do occur, they often require indigenous governance institutions – already overburdened with paperwork – to respond within relatively short time frames to what has been described as a "bombardment" of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns. Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue" (Para 72, p. 20).

and informed consent." "States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented

"Indigenous representatives made the Special Rapporteur aware of a number of proposed or implemented development projects that they feel pose great risks to their communities and about which they feel their concerns have not been adequately heard, or addressed. These include:

- The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast;
- The Kinder Morgan Trans Mountain pipeline twinning project;
- The New Prosperity open pit gold and copper mine in unceded Tsilhqot'in traditional territory, which was twice rejected by an environmental assessment panel;
- The Fortune Minerals open-pit coal mine permit, which issued over 16,000 hectares of unceded traditional territory of the Tahltan Nation in British Columbia;
- The Liquid Natural Gas pipeline and drill wells in northern British Columbia in Treaty 8 nations' traditional territory;
- Site C hydroelectric dam on the Peace River affecting Treaty 8 nations;
- The Athabaskan oilsands project, which is contaminating waters used by the downstream Athabasca First Nation;
- The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional territory, in which a lack of prior consultation resulted in bidirectional litigation and the imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI nation;
- Clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake;
- Two proposed hydroelectric dams affecting the Pimicikamak nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands;
- The re-opening of a Hudbay nickel/gold mine in Mathias Columb First Nation traditional territory without consultation with, consent of, or benefits sharing agreement with that nation;
- The construction of the Fairford and Portage Diversion water-control structures, and the 2011 lack of imminent flood protection, flooding, and relocation of Lake St. Martin First Nation;
- Approval of the construction of the Jumbo Glacier Resort in an unceded area of

		<p>spiritual significance to the Ktunaxa Nation;</p> <ul style="list-style-type: none"> <li>• Authorization of forestry operations in Mitchikanibikok Inik (Algonquins of Barriere Lake);</li> <li>• Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations;</li> <li>• Seismic testing for natural gas “fracking” extraction in Elsipogtog First Nation traditional territory” (Para 73, p. 20-21).</li> </ul> <p>“...the indigenous representative with whom the Special Rapporteur met expressed concern that, generally speaking, provincial governments do not engage the duty to consult until development proposals have largely taken shape. When consultation happens, resource companies have often already invested in exploration and viability studies, baseline studies are no longer possible, and accommodation of indigenous peoples’ concerns requires a deviation from companies’ plans. The Special Rapporteur notes that this situation creates an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans” (Para 76, p. 22).</p>
<p>States take effective measures to ensure that no storage or disposal of hazardous materials take place in the lands or territories or Indigenous Peoples without their free, prior and informed</p>	<p>D/K</p>	<p><i>Insufficient Evidence in Report</i></p>

	consent.		
	States take effective measures to ensure that programmes for monitoring, maintaining and restoring the health of Indigenous Peoples are developed and implemented by the peoples affected by such materials.	D/K	<i>Insufficient Evidence in Report</i>
<b>Article 32</b> Indigenous peoples have the right to determine and develop priorities and strategies for	Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their	1	“One of the most dramatic contradictions indigenous peoples in Canada face is that so many live in abysmal conditions on traditional territories that are full of valuable and plentiful natural resources. These resources are in many cases targeted for extraction and development by non-indigenous interests. While indigenous peoples potentially have much to gain from resource development within their territories, they also face the highest risks to their health, economy, and cultural identity from any associated environmental degradation. Perhaps more importantly, indigenous nations’ efforts to protect their long-term interests in lands and resources often fit uneasily into the efforts by private non-indigenous companies, with the backing of the federal and provincial governments, to move forward with natural resource

<p>the development or use of their lands or territories and other resources." "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</p>	<p>lands or territories and other resources.</p>	<p>projects" (Para 69, p. 19).</p> <p>"As negotiations under the treaty and claims processes reach a standstill in many cases, other kinds of negotiated agreements outside of these contexts are taking place, especially in relation to natural resources development, a booming industry in Canada and a main driver of the Canadian economy. Indeed, there are a number of examples in which First Nations have enjoyed economic and social benefits from resource projects, either through their own businesses, joint ventures, or benefit sharing agreements. In particular those First Nations that have clarified their aboriginal rights and title can benefit from these potential economic development initiatives" (Para 70, p. 20).</p> <p>"The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the "honour of the Crown" together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights. The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed" (Para 71, p. 20).</p> <p>"The Federal Government informed the Special Rapporteur that the duty to consult and accommodate in connection with resource development projects can be met through existing processes, such as the environmental assessment process. Since the passage of the controversial 2012 Jobs, Growth and Long Term Prosperity omnibus legislation, discussed above, fewer projects require federal environmental assessments. When they do occur, they often require indigenous governance institutions – already overburdened with paperwork – to respond within relatively short time frames to what has been described as a "bombardment" of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns. Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue" (Para 72, p. 20).</p>
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<p>in connection with the development, utilization or exploitation of mineral, water or other resources." "States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."</p>		<p>“Indigenous representatives made the Special Rapporteur aware of a number of proposed or implemented development projects that they feel pose great risks to their communities and about which they feel their concerns have not been adequately heard, or addressed. These include:</p> <ul style="list-style-type: none"> <li>• The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast;</li> <li>• The Kinder Morgan Trans Mountain pipeline twinning project;</li> <li>• The New Prosperity open pit gold and copper mine in unceded Tsilhqot’ in traditional territory, which was twice rejected by an environmental assessment panel;</li> <li>• The Fortune Minerals open-pit coal mine permit, which issued over 16,000 hectares of unceded traditional territory of the Tahltan Nation in British Columbia;</li> <li>• The Liquid Natural Gas pipeline and drill wells in northern British Columbia in Treaty 8 nations’ traditional territory;</li> <li>• Site C hydroelectric dam on the Peace River affecting Treaty 8 nations;</li> <li>• The Athabasca oilsands project, which is contaminating waters used by the downstream Athabasca First Nation;</li> <li>• The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional territory, in which a lack of prior consultation resulted in bidirectional litigation and the imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI nation;</li> <li>• Clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake;</li> <li>• Two proposed hydroelectric dams affecting the Pimicikamak nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands;</li> <li>• The re-opening of a Hudbay nickel/gold mine in Mathias Columb First Nation traditional territory without consultation with, consent of, or benefits sharing agreement with that nation;</li> <li>• The construction of the Fairford and Portage Diversion water-control structures, and the 2011 lack of imminent flood protection, flooding, and relocation of Lake St. Martin First Nation;</li> </ul>
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		<ul style="list-style-type: none"> <li>• Approval of the construction of the Jumbo Glacier Resort in an unceded area of spiritual significance to the Ktunaxa Nation;</li> <li>• Authorization of forestry operations in Mitchikanibikok Inik (Algonquins of Barriere Lake);</li> <li>• Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations;</li> <li>• Seismic testing for natural gas “fracking” extraction in Elsipogtog First Nation traditional territory” (Para 73, p. 20-21).</li> </ul> <p>“It is worth referencing other positive initiatives at the provincial level in the area of resource extraction that encourage indigenous participation in economic development activities and benefits. For example, Ontario has a loan guarantee program to facilitate joint ventures in green energy development by First Nations and provides funding for them to obtain third party, professional advice to assess the feasibility and viability of a proposed partnership. Ontario also funds the Métis Voyageur Development Fund for Métis-led resource development. In Alberta, industry groups point to a number of joint ventures with First Nations in the energy sector, such as Kainai Energy oil and gas development company of the Blood Tribe and Tribal North Energy Services of Whitefish Lake First Nation. In British Columbia and other parts of the country, governments encourage impact benefit and resource sharing agreements between resource companies and First Nations. British Columbia also has revenue sharing arrangements for mining royalties, stumpage fees, and oil and gas revenues. The Special Rapporteur is concerned, however, about the province of Saskatchewan’s position against revenue sharing directly with First Nations on the ground that resources are for all residents of Saskatchewan” (Para 77, p. 22).</p>
<p>The State consults and cooperates in good faith with the</p>	<p>1</p>	<p>“The Supreme Court of Canada has been clear that the protection of aboriginal rights in the Canadian constitution and the “honour of the Crown” together impose a duty to consult aboriginal peoples when their rights – asserted or recognized – may be affected by government action and, where appropriate, to accommodate those rights. The Special Rapporteur repeatedly heard from aboriginal leaders that they are not opposed to development in their lands generally and go to great lengths to participate in such consultation processes as are available, but that these are generally inadequate, not designed</p>

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.

to address aboriginal and treaty rights, and usually take place at a stage when project proposals have already been developed” (Para 71, p. 20).

“The Federal Government informed the Special Rapporteur that the duty to consult and accommodate in connection with resource development projects can be met through existing processes, such as the environmental assessment process. Since the passage of the controversial 2012 Jobs, Growth and Long Term Prosperity omnibus legislation, discussed above, fewer projects require federal environmental assessments. When they do occur, they often require indigenous governance institutions – already overburdened with paperwork – to respond within relatively short time frames to what has been described as a “bombardment” of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns. Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue” (Para 72, p. 20).

“Indigenous representatives made the Special Rapporteur aware of a number of proposed or implemented development projects that they feel pose great risks to their communities and about which they feel their concerns have not been adequately heard, or addressed. These include:

- The Enbridge Northern Gateway pipeline from Alberta to the British Columbia coast;
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- The Platinex project in Kitchenuhmaykoosib Inninuwug (KI) First Nation traditional

territory, in which a lack of prior consultation resulted in bidirectional litigation and the imprisonment of community leaders for mounting a blockade to protect their lands; and subsequent deals to withdraw KI lands from prospecting and mining development without consultation with the KI nation;

- Clean-up, remediation and compensation process for six bitumen oil spills resulting from steam injection extraction in Cold Lake First Nation traditional territory, a remediation process that has included draining a lake;
- Two proposed hydroelectric dams affecting the Pimicikamak nation, despite implementation failures of the Northern Flood Agreement that was intended to mitigate the effects of the last hydroelectric dam that flooded and eroded their lands;
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- Setting the percentage of the salmon fishery allocated to aboriginal uses (social and commercial) without consultation with affected First Nations;
- Seismic testing for natural gas “fracking” extraction in Elsipogtog First Nation traditional territory” (Para 73, p. 20-21).

“Since natural resources on public lands are owned and regarded by provincial governments, while “Indians, and lands reserved for Indians” are a federal jurisdiction, Canada’s duty to consult and, when appropriate, accommodate indigenous peoples with rights and interests over lands where development is proposed implicates both orders of government. As a practical matter, however, it appears that resource companies themselves organize the consultations, where they occur. The federal Government has acknowledged that it lacks a consistent consultation protocol or policy to provide guidance to provinces and companies concerning the level of consultation and forms of accommodation required by the

		<p>constitutional duty to consult.” (Para. 74, p. 21)</p> <p>“There are some positive developments around the duty to consult, primarily at the provincial level. In Ontario, the negotiation of community-specific impact and benefit agreements with resource companies are becoming common and expected by indigenous communities. Ontario has also amended its Mining Act and Green Energy Act to require increased consultation and accommodation to protect aboriginal rights, and notice prior to any mineral claim staking. Manitoba has created a Crown-Aboriginal Consultation Participation Fund to facilitate aboriginal participation in consultations, and is treating its Interim Provincial Policy and Guidelines for Crown Consultations as a work in progress pending further feedback and dialogue with aboriginal nations. In Nova Scotia, indigenous nations have worked with the provincial and federal governments to develop terms of reference for consultations. The federal Government is also working with a number of provinces on framework agreements or memoranda to improve the clarity and consistency of consultation processes” (Para 75, p. 22).</p> <p>“However, the indigenous representative with whom the Special Rapporteur met expressed concern that, generally speaking, provincial governments do not engage the duty to consult until development proposals have largely taken shape. When consultation happens, resource companies have often already invested in exploration and viability studies, baseline studies are no longer possible, and accommodation of indigenous peoples’ concerns requires a deviation from companies’ plans. The Special Rapporteur notes that this situation creates an unnecessarily adversarial framework of opposing interests, rather than facilitating the common creation of mutually beneficial development plans” (Para 76, p. 22).</p>
	<p>States provide effective mechanisms for just and fair redress for any activities, and appropriate</p>	

	measures to mitigate adverse environmental, economic, social, cultural or spiritual impact.	D/K	<i>Insufficient Evidence in Report</i>	
	<b>Total Score</b>	<b>5/18 (6 D/K)</b>	<b>% Score</b>	<b>27.78%</b>

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