

True, Lasting Reconciliation

Implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in British Columbia in Law, Policy & Practices



Union of British
Columbia Indian Chiefs



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office

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Full report available at:
[policyalternatives.ca/
UNDRIP-BC](http://policyalternatives.ca/UNDRIP-BC)

Summary

THE IMPLEMENTATION OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UN Declaration) is a central political and public policy issue around the world, and more dialogue needs to take place on how the *UN Declaration* can and should be put into action. The full-length report (available at www.policyalternatives.ca/UNDRIP-BC) helps to fill the gap by advancing discussion on the implementation of the *UN Declaration* in British Columbia. It challenges politicians, officials, advisors, experts and the public to explore a range of avenues about how the *UN Declaration* can be given meaning on the ground in constructive, impactful and practical ways. Inspiring our research is a strong belief that there exists significant unfinished business to address the legacy of colonization of Indigenous peoples in Canada, and that addressing this legacy requires significant changes to legal and policy frameworks.

The report takes stock of current efforts to implement the *UN Declaration* in British Columbia, identifies roles and responsibilities in implementation efforts and makes recommendations on actions going forward. There now exists wide agreement in Canadian and British Columbian society that the Calls to Action made by the Truth and Reconciliation Commission (TRC) must be adopted. Fundamental to the TRC's final report is Call to Action 43:

We call upon the federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

This means that one cannot be in support of the TRC Calls to Action without also being in favour of full implementation of the *UN Declaration*.

Our research concludes that implementation of the *UN Declaration* will involve a diverse and dynamic set of legislative and policy shifts by government; action by Indigenous Nations to rebuild and revitalize their governments, structures and legal systems; and changes in processes and patterns of relations, negotiations and treaty and agreement-making, including a shift from

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What is free, prior and informed consent?

Indigenous peoples have the right to self-determination, which the United Nations recognizes as a fundamental human right. This includes the right to determine their own priorities and control how their lands and resources will be used and for what purposes.

First Nations, Inuit and Métis peoples also have the right to fully participate in federal, provincial and territorial decision-making processes that have an impact on their rights. The federal, provincial and territorial governments also have a responsibility to ensure that their decisions, and those of third parties, do not contribute to further harms to Indigenous peoples.

In this broad context, Indigenous peoples have a clear right to determine for themselves whether to say “yes” or “no” or “yes with conditions,” whenever governments or corporations propose actions that could have an impact on their lives, lands, jurisdictions and future. The exercise of this aspect of the right to self-determination is known as “free, prior and informed consent,” or FPIC.

Indigenous peoples must have access to all relevant information to make their decisions. This may require the translation of information into Indigenous languages. This may also require access to independent assessment of the proposal and its potential consequences, including possibly through a formal environmental and social impact assessment process. Critically, Indigenous peoples must have the time and opportunity to reach an informed conclusion based on their own forms of decision-making. The process must be free of intimidation, threat of retaliation or other forms of duress.

From *Free, Prior and Informed Consent* Factsheet, endorsed by Amnesty International Canada, Assembly of First Nations, BC Assembly of First Nations, Canadian Friends Service Committee (Quakers), First Nations Summit, Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, KAIROS: Canadian Ecumenical Justice Initiatives, Native Women's Association of Canada and the Union of BC Indian Chiefs, available <https://quakerservice.ca/wp-content/uploads/2018/07/FPIC-factsheet-june-2018-Declaration-Coalition-1-2.pdf>.


consultation to consent-based decision-making (see box on “Free, Prior and Informed Consent”). Fundamental to the *UN Declaration* is an understanding that government must move from a “duty to consult” to a genuine process of obtaining free, prior and informed consent of Indigenous Nations in all matters pertaining to their Title and Rights.

There does not exist, nor can there exist, a “one size fits all” model of Crown-Indigenous relations that is consistent with the *UN Declaration*, nor is there a single legislative or policy action that will see the *UN Declaration* reflected on the ground in the life of British Columbians. Iterative actions, which pursue change systematically and build on one another, are required. The report outlines the work that all groups must do to advance the transformational changes that are needed for full and unqualified implementation of the *UN Declaration* in this region, where Indigenous Title is unceded and yet Indigenous Rights have been too long marginalized in the daily, ongoing practices of governance.

The report outlines foundational principles for implementing the *UN Declaration*, and then makes a number of wide-ranging recommendations that build upon the Commitment Document that has been signed by the BC government and the First Nations Leadership Council (which comprises the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs). Among our report’s recommendations are the following:

- A core element of reconciliation is that the *UN Declaration* should be embedded in BC law, by passage of framework legislation that is modelled on and builds upon the federal Bill C-262 (introduced by Member of Parliament (MP) Romeo Saganash). This Act must be co-developed and co-drafted with Indigenous organizations. Among other things, it should oblige the BC government to adopt an implementation Action Plan; to systematically review all BC laws, policies and practices to ensure compliance with the *UN Declaration*; and to include a mechanism for ongoing independent oversight and accountability to ensure implementation of the Action Plan;
- Implementation requires a focus on Indigenous self-determination. This means that implementation will look different in different places. Efforts of governments or other actors cannot prescribe, define or determine Indigenous peoples’ own priorities. Crown governments must create the space that ensures they can be appropriately responsive to paths determined by Indigenous peoples;
- Moving forward, tangible steps on the ground are needed to turn words into action (and this report offers some recent positive examples); and
- The government should undertake public education and outreach to raise awareness of the *UN Declaration* in BC, both within the public service and the general public.

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Additional documents

Implementing the *United Nations Declaration on the Rights of Indigenous Peoples in British Columbia Law, Policy and Practices* (full report), <https://www.policyalternatives.ca/UNDRIP-BC>

United Nations *Declaration on the Rights of Indigenous Peoples*: <https://www.policyalternatives.ca/UNDRIP-BC/Appendix-A-UNDRIP>

Commitment Documents between the BC Government and the First Nations Leadership Council:

2018 Vision for Implementing the Commitment Document, <https://www.policyalternatives.ca/UNDRIP-BC/Appendix-B-Vision>

2018 Actions for Implementing the Commitment Document, <https://www.policyalternatives.ca/UNDRIP-BC/Appendix-B-Action>

2015 Original Commitment Document, <https://www.policyalternatives.ca/UNDRIP-BC/Appendix-B-Commitment>

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About the UBCIC

UBCIC strengthens Indigenous Nations to assert and implement their Aboriginal Title, Rights, Treaty Rights and Right of Self-Determination as Peoples. UBCIC works collectively amongst Indigenous Nations in BC and to act as an advocacy body to provide a cohesive voice (regionally, nationally and internationally) in support of Indigenous Nations and communities, and to promote and protect each Nation's exercise of Sovereignty within their traditional territories. UBCIC promotes the respect for Indigenous Peoples' cultures and societies, as well as fostering fundamental and necessary research skills for Indigenous Peoples in the province. UBCIC is a member-driven, non-profit political advocacy organization.

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About the CCPA

The Canadian Centre for Policy Alternatives is an independent, non-partisan research institute concerned with issues of social, economic and environmental justice. Founded in 1980, it is one of Canada's leading progressive voices in public policy debates.

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