

**Written Statement: Human Rights Dialogue with the Special
Rapporteur on the Rights of Indigenous Peoples and the Expert
Mechanism on the Rights of Indigenous Peoples**

Submission to:

The United Nations Permanent Forum on Indigenous Issues

Via: estatements@un.org

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The Union of BC Indian Chiefs appreciates this opportunity to provide a written statement to the United Nations Permanent Forum on Indigenous Issues.

For decades, the UBCIC has advocated for Canada, as well as the British Columbia government, to fully implement the rights of Indigenous peoples, including meeting all the standards in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration). While British Columbia has adopted the UN Declaration in law through the *Declaration on the Rights of Indigenous Peoples Act*, and Canada appears to be poised to do so through federal government *Bill C-15 United Nations Declaration on the Rights of Indigenous Peoples Act*, the standards of the UN are still not being met. Implementation of any of the minimum standards for the survival, dignity, and well-being of Indigenous peoples remains a significant struggle. UBCIC Resolution 2019-04 “Free, Prior and Informed Consent” outlines UBCIC’s position on FPIC and the UBCIC Chiefs Council reaffirms support for the full and meaningful implementation of the *UN Declaration on the Rights of Indigenous Peoples*, including the right to self-determination and FPIC.

This submission focuses specifically on Canada’s failure to meet the aspirations of Sustainable Development Goal (SDG 16) to “promote just, peaceful, and inclusive societies” and how the lack of implementation of the basic human rights of Indigenous Peoples in the UN Declaration is a fundamental barrier to achieving SDG 16.

Systemic Racism and Canada’s Colonial Legacy

Over the past year, like in much of the world, there has been a heightened awareness of the enduring reality, and depth, of systemic racism. In Canada, anti-Indigenous racism has a particular strength. This has been evidenced time and again, whether in policing, education, child and family services, health care, the justice system, workplaces, or any other social sector. Indeed, in a landmark independent review of BC’s health care system completed in November 2020, Dr. Mary Ellen Turpel-Lafond concluded:

The results are disturbing. Through listening to thousands of voices – through survey results, direct submissions, health care data and interviews – a picture is presented of a B.C. health care system with widespread systemic racism against Indigenous people. This stereotyping, discrimination and prejudice results in a range of negative impacts, harm, and even death. Indigenous women are particularly impacted. Public health emergencies are magnifying these issues.¹

As Dr. Turpel-Lafond illustrates, anti-Indigenous racism in Canada is grounded in colonial laws and policies designed to disempower, dispossess, and segregate Indigenous peoples. Central to this is the *Indian Act*, which in 2021 remains the primary law governing the lives of First Nations peoples. It is the *Indian Act* that laid the foundation for the residential school system, the banning of Indigenous governments, the breaking up of family and knowledge systems, the establishment of the Indian reserve system, and criminalization of core aspects of Indigenous society and culture.

The continuing reliance on the racist *Indian Act* is reflective of the reality that racism is written into the legislation of Canada and British Columbia. This racism is express in the laws such as the *Indian Act*. It is also present in how Indigenous peoples and their rights are fully omitted or ignored in the legislative regime governing lands and resources. Despite dozens of Supreme Court of Canada decisions that

¹¹ <https://engage.gov.bc.ca/app/uploads/sites/613/2020/11/In-Plain-Sight-Full-Report.pdf>

affirm Indigenous title and rights, and the adoption of the UN Declaration by Canada and British Columbia, legislation regarding lands and resources remain based on the assumption that Indigenous people do not exist, and have no lawful relationship to their territories. This denial of Indigenous peoples and their rights is rooted in the racist assertion that these lands were “discovered” by Europeans that was a founding doctrine of Canada.

Systemic Racism and Free, Prior and Informed Consent

One expression of this anti-Indigenous racism in relation to lands and resources is the exclusion of Indigenous peoples from decision-making. Many provisions of the UN Declaration seek to address this exclusion, including multiple articles related to the standard of free, prior and informed consent (including articles 19, 28, and 32). With the endorsement of the UN Declaration by Canada and BC, the passage of the Declaration Act, and Canada’s proposal of Bill C-15, it has been anticipated this legislated racism in relation to Indigenous roles in decision-making would change. To date, it has not.

The [2018 study](#) by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) states that “[FPIC] constitutes three interrelated and cumulative rights of indigenous peoples: the right to be consulted; the right to participate; and the right to their lands, territories and resources. Pursuant to the Declaration, free, prior and informed consent cannot be achieved if one of these components is missing.” Fundamental to the denial in Canada and in BC is that the third component is missing. The legislation of Canada and BC do not recognize the right to lands, territories, and resources. As a result, FPIC is not implemented, and the pernicious intersection of systemic racism and natural resource development continues to deepen.

The examples of this intersection are growing daily. Since the endorsement of the UN Declaration we have seen Canada and BC proceed with the Site C dam project, the Trans Mountain Pipeline Expansion project, Coastal Gas Link Pipeline over the opposition of Indigenous Title and Rights holders and without free, prior, and informed consent.

At the same time, where Canada and BC have trumpeted changes they have made, they have served to re-enforce divisions between Indigenous Nations, thus reflecting colonial practices of ‘divide and conquer’. For example, Canada and BC announced in 2019 a [Recognition and Reconciliation of Rights Policy for Treaty Negotiations in BC](#). This policy was developed through formal engagement and sign-off only with Nations within the British Columbia Treaty Commission Process. The policy ignores and fails to address the fundamental issue that has resulted in most First Nations rejecting the process – that it is not based on recognition of Title and Rights and as such allows treaties to be completed without consideration of territorial boundaries, and without ensuring the territorial integrity of neighbouring Nations is respected. In other words, it permits treaties to be completed while potentially negatively impacting or even infringing the rights of other Nations.

The intersection of systemic racism and natural resource development is also seen in violence against Indigenous women and girls. Natural resource extraction, climate change and violence against the land is directly linked to violence against women and girls. The final report of Canada’s National Inquiry into Missing and Murdered Indigenous Women and Girls heard from expert witnesses that resource extraction can drive violence against Indigenous women and girls in several ways, including issues related to transient workers, “man camps,” harassment and assault in the workplace, rotational shift work, substance abuse/addictions, and economic insecurity.

While Canada and BC fail to uphold FPIC the State also uses its courts and police force against First Nations when those rights are exercised. For example, on February 19, 2021 Indigenous youth and supporters were violently arrested in Vancouver for protesting the Trans Mountain Expansion project. In UBCIC's 2020 [submission](#) to the Expert Mechanism on the Rights of Indigenous Peoples on the right to land under the *UN Declaration*, UBCIC outlined how many peaceful Indigenous advocates and land defenders have seen FPIC ignored, their Title and Rights violated, and have been victims of police surveillance and violence, blackmail, travel bans, and harassment.

Conclusion

The anti-Indigenous racism inherent in the legislation of the State is pervasive. If this exists, a more just, peaceful, and inclusive society cannot emerge. To promote needed change, UBCIC makes the following recommendations:

1. That BC immediately “take all measures necessary” to make its legislation consistent with the UN Declaration as required by article 3 of the Declaration Act and stop ignoring this provision of its own law.² Relatedly, that BC and Canada fully implement Article 19 of the UN Declaration in making legislative change.
2. That BC and Canada fully implement all the recommendations of the *In Plain Sight* report, including recommendation 2 that in collaboration and cooperation with Indigenous peoples in Canada, develop appropriate foundational policy and implement legislative changes to establish strong anti-racism principles and “hard-wire” cultural safety. This would include advancing an Anti-Racism Act and implementing other critical changes in existing laws, policies, regulations, and practices that would align with the *UN Declaration*. This also includes renouncing all colonial doctrines of superiority in law.
3. UBCIC reiterates its previous recommendation in its submission “Canada: Impacts of Natural Resource Extraction on the Title and Rights of Indigenous Peoples in British Columbia” to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance that “Implementation of the UN Declaration on the Rights of Indigenous Peoples must be full and meaningful, not selectively based on what is politically convenient. States and industry must meaningfully recognize and respect the right of Indigenous Peoples to give or withhold their free, prior and informed consent (FPIC) regarding the approval of any project affecting their lands or territories or other resources, especially through Indigenous Peoples’ own representative institutions. There is a State obligation to foster and support the exercise of FPIC by working with Indigenous peoples to establish appropriate processes and recourse mechanisms (art. 27 of the UN Declaration).”
4. That Canada and its Provinces and Territories provide sufficient resources to Indigenous peoples not merely for consultation, but Free, Prior, and Informed Consent, including the resources required to address referrals and capacity funding to analyze and monitor the cumulative impacts of development on our territories.

² For an analysis of what BC should be doing, and what it has failed to do, to align laws with the UN Declaration see the following paper published by the Residential School History and Dialogue Centre at the University of British Columbia: https://irshdc.ubc.ca/files/2021/04/UNDRIP_Article8_AllMeasures_FINAL.pdf