

# UNDRIP: A TOOL TO PROMOTE INDIGENOUS LEADERSHIP IN ENVIRONMENTAL CONSERVATION

Historically, arguments around environmental conservation have been used to deny Indigenous Peoples their rights to use and manage natural resources on their traditional lands. This line of argument continues into the present day. At the same time, several recent and newsworthy examples have showcased Indigenous Peoples voicing their opposition to government-authorized projects that threatened the natural integrity of their traditional territories. This is especially important considering the aggravated impact that pollution and changes to the environment have on Indigenous peoples' health, spiritual practices, and general well-being.

Against this backdrop, the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) could give Indigenous governments equal footing with Canadian governments when it comes to decision-making around their lands and other resources.

## 1. UNDRIP: BACKGROUND

UNDRIP came about thanks to the combined efforts of Indigenous experts around the world. It sets out a series of fundamental rights belonging to Indigenous Peoples. UNDRIP was first adopted by a majority of UN member states in 2007. The Canadian government did not fully endorse it until 2016.

In 2021, the Government of Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA). This Act helps to confirm that the Declaration applies in Canadian law and it instructs Canadian governments to make sure that other laws are consistent with its principles. This is significant because the ideas and rights from UNDRIP can now be used to re-shape existing Canadian laws that dictate the relationship between Indigenous Peoples and the Canadian state.

**UNDRIP** - An international legal document that offers important principles to guide the relationship between colonial states and Indigenous Peoples

**UNDRIPA** - A domestic Canadian law that cements UNDRIP's importance within the Canadian legal system

## 2. HOW UNDRIP CHANGES THE LANDSCAPE

There are several tools pre-dating UNDRIP that Indigenous Peoples have used to voice their concerns about the conservation of their traditional territories or assert their right to manage these territories. For example, they can rely on existing treaty rights. (Treaties are essentially agreements between Indigenous Nations and the federal government.) They can also call upon so-called “Aboriginal rights”, which include hunting and fishing rights. Where the government takes an action that might go against these rights, they have a duty to consult with the affected Indigenous groups.

Note: While UNDRIP uses the language of “Indigenous Peoples”, Canadian laws often use the word “Aboriginal” as another umbrella term for Canada’s First Nations, Inuit and Métis Peoples.

There are also different Canadian environmental laws that recognise Indigenous Peoples’ rights and some explicitly require consultation with Indigenous representatives.

Some related federal laws:

- *Species at Risk Act*
- *Canadian Environmental Protection Act*
- *Fisheries Act*
- *Federal Sustainable Development Act*
- *Impact Assessment Act*

Note that each province may also have their own relevant laws.

UNDRIP and UNDRIPA introduce the concept of **free, prior and informed consent** (FPIC). Based on article 19 of UNDRIP, the Canadian state would have to receive this type of consent before taking any measures that could affect an Indigenous group’s rights.

At a basic level, there are four elements to this concept:

- **Free** - The process of obtaining consent must be free from threats or intimidation
- **Prior** - Indigenous Peoples must be given enough time to come to a reasoned decision
- **Informed** - Indigenous Peoples must be offered all relevant information before deciding
- **Consent** - This process requires more than just consultation or some engagement, but instead should amount to a collective decision

Beyond the basics, FPIC should be understood in the broader context of what UNDRIP tells us. This is open to some interpretation, but several scholars and participants in the process of drafting the Declaration have emphasised that UNDRIP promotes Indigenous self-determination. UNDRIPA confirms this idea. This means that FPIC could require Canadian and Indigenous governments to build ongoing nation-to-nation relationships in which Indigenous groups offer continual input on policies and projects that affect their rights.

***Self-determination** is the idea that Indigenous Peoples should be free to decide their own destinies and develop their own systems of government to do so.*

### 3. UNDRIP ON RESOURCE MANAGEMENT AND CONSERVATION

UNDRIP includes several sections that are specific to the use of natural resources, including lands, water and minerals. The relevant sections, or articles, are outlined in the following table.

Article	What It Does
3	Sets out the right to self-determination
10	Rejects the forced relocation of Indigenous Peoples or relocation without FPIC
20	Supports traditional subsistence rights such as Indigenous hunting and fishing rights
25	Ensures the right of Indigenous Peoples to maintain a spiritual relationship with lands, waters and other resources and to uphold their relevant responsibilities to future generations
26	Guarantees the right to traditional or more newly acquired lands and resources, as well as the right to own, use, develop and control these resources
27	Asks states to establish a fair process to decide on Indigenous rights related to lands and resources and requires that this process recognise Indigenous laws and customs
28	Entitles Indigenous Peoples to fair compensation for lands and resources which have been used without obtaining FPIC
29	Describes the right to the conservation and protection of the environment and “productive capacity” of Indigenous lands and resources as well as states’ obligation to properly dispose of hazardous materials.
32	Sets out that Indigenous Peoples have the right to determine priorities and strategies for the use of their lands and resources and requires states to obtain FPIC prior to the approval of a project affecting these resources; states are also required to take measures to reduce environmental, economic, social, cultural or spiritual harm from these projects
46	UNDRIP was the result of a compromise. As a result, the rights that it outlines could be breached under article 46, but only if a state like Canada can show a very compelling reason to do so

## 4. POTENTIAL FOR UNDRIP AND FPIC IN INDIGENOUS-LED CONSERVATION

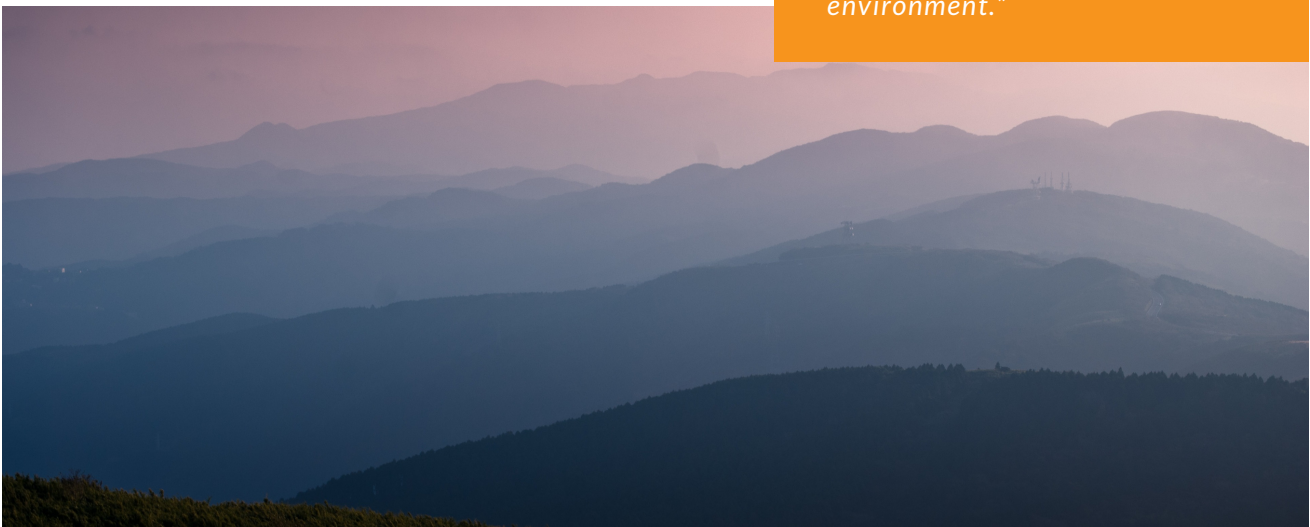
The concept of FPIC can be used to shape decision-making around environmental conservation. The idea of requiring an Indigenous Nation's consent before moving forward with projects that affect their territories presents the advantage of certainty for all parties, including third-party companies involved in industrial projects. Certainty is often lacking when only consultation is required.

As mentioned above, UNDRIP and FPIC would pave the way for greater Indigenous self-determination and positive relationships between all parties involved. In practice, this means that different Indigenous groups could adapt the decision-making process to their different legal systems. In the environmental sector, this also means that Indigenous groups could play a key role in resource management, alongside Canadian governments and companies. This would be an opportunity for Indigenous Peoples to bring knowledge of their traditional territories to the table.

Natural resource exploitation on Indigenous territories has been a source of conflict, but the ongoing relationships created under FPIC would give Indigenous Nations the opportunity to put forward their concerns and have those concerns considered in an impactful way. This type of dialogue is significant considering what is at stake in a situation where an external actor interferes with lands inhabited by Indigenous peoples. That is, human health, sustainable sharing of resources and the protection of existing Aboriginal and treaty rights.

UNDRIP's preamble offers general statements that help to interpret the rest of the *Declaration*.

From the preamble:  
*"Recognising that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment."*





## 5. PRACTICAL DEVELOPMENTS SINCE CANADA ENDORSED UNDRIP

In 2017, the federal government committed to 10 principles to promote reconciliation with Indigenous Peoples. They include a commitment to secure FPIC when the government takes actions which impact Indigenous rights, lands, and resources. In doing so, the government would recognise Indigenous systems of government, going beyond simple consultation.

In 2019, the government made changes to the federal environmental impact assessment process. Importantly, the process now requires partnerships and engagement with Indigenous groups, in line with UNDRIP.

Overall, UNDRIP creates expectations for how Canadian governments will engage with Indigenous Peoples going forward. These examples show how the Declaration can be used to put pressure on Canadian governments. This can push governments to meaningfully involve Indigenous Peoples in projects that affect their natural resources and promote their self-determination in the field of conservation.

### Resources to Continue Learning:

- Brenda Gunn, "Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook" (2011), online (pdf): *Indigenous Bar Association* <[http://www.indigenousbar.ca/pdf/undrip\\_handbook.pdf](http://www.indigenousbar.ca/pdf/undrip_handbook.pdf)> [<https://perma.cc/8Z6S-UJDV>].
- Hannah Askew et al., "Between Law and Action: Assessing the State of Knowledge on Indigenous Law, UNDRIP and Free, Prior and Informed Consent with reference to Fresh Water Resources" (2017), online (pdf): *West Coast Environmental Law* <<https://decolonizingwater.sites.olt.ubc.ca/files/2017/09/Bakker-Askew-Final-UNDRIP.pdf>> [<https://perma.cc/P9PX-S4UM>].