**Supplementary information**

*Articulating Indigenous rights within the inclusive development framework: An assessment of forest stewardship policies and practices in British Columbia, Canada*

**Table of key terminology and policy related to forest stewardship in Canada.**

| **Term** | **Definition** |
| --- | --- |
| **Allowable Annual Cut (AAC)** | The maximum amount of timber that may be harvested each year from a particular area of land. This rate of cut takes into consideration socio-economic and environmental decisions. However, of main concern to First Nations communities is the ability to influence the rate of cut since it affects the harvesting in the traditional territories (Government of BC 2018a).  |
| **Collaborative consent** | A mutual consent process that focuses on governance and changing how decisions are made. Specifically, it requires all governments (Canadian and Indigenous) to continuously build new, shared spaces, structures and institutions as part of an evolving relationship – ensuring that there is free, prior, and informed consent (Papillion and Rodon 2017; Simms et al. 2018). |
| **Consultation** | The gathering of comments and experiences with no obligation to take participants’ views into consideration for the given policy outcome (Organisation for Economic Co-operation and Development—OECD 2016). |
| **Duty to consult and accommodate** | The statutory obligation by the Crown to consult with Indigenous Peoples in Canada and if required, to accommodate issues expressed by Indigenous Peoples when the Crown intends to act in a manner that may have negative effects on Indigenous title and rights (Minister of Aboriginal Affairs and Northern Development Canada 2011). |
| **Ethical sustainability** | The economic, social, and environmental attributes of “sustainability” but also includes ethical values [i.e., “cultural integrity and vitality (cultural/aesthetic perspective), personal growth (religious/spiritual perspective), and good governance (political/institutional perspective)” (Burford et al. 2013, 3038)]. Thus, ethical sustainability encompasses processes that enable the forestry industry to be ethical over the long-term. |
| ***Forest Act*** | The *Forest Act* addresses rights to log Crown (public) timber. It was originally written at a time when BC's forests seemed limitless and the primary concern of government was the development and settlement of the province (Government of BC 2018b). |
| ***Forest & Range Practices Act*** | This BC government legislation describes how all forest and range practices and resource-based activities are to be conducted on Crown land in BC, while ensuring the protection of everything in and on them, such as plants, animals, and ecosystems (Government of BC 2018c).  |
| **Indigenous forest stewardship** | The responsibility of Indigenous Peoples to protect and respect the forests, surrounding lands, waters, and biodiversity. |
| **Indigenous Peoples** | Indigenous Peoples are recognized through a process of self-identification, historical continuity, strong linkage to ancestral territories and surrounding natural resources, distinct systems (cultural, social, economic, political) (United Nations n.d., 1). Unless specified, the information and resources presented in this article can be applied to all Indigenous Peoples in Canada [First Nations (Status and Non-Status), Métis, and Inuit].  |
| ***Land Act*** | The *Land Act* is the main legislation governing the disposition of provincial Crown (public) land in BC. Crown land is any land owned by the Province, including land that is covered by water, such as the foreshore and the beds of lakes, rivers, and streams (Government of BC 2018d). |
| **Meaningful engagement** | A willingness and ability to provide opportunities for Indigenous Peoples or communities to actively take part in policy and decision-making processes that are balanced in terms of sharing power and influence (Joseph 2013).At times, definitions of terms such as “meaningfulness” and “meaningful engagement” and the corresponding operationalization of same have often been confused with parallel or similar forms of participation in policy development and decision-making such as “information sharing” and “consultation” (OECD 2016).  |
| **Nation Building** | The efforts of Indigenous communities to increase capacity for self-governance, self-determination, and sustainable community and economic development. Furthermore, it acknowledges the (re)building of institutions of self-government that are culturally appropriate to Indigenous communities (Native Nations Institute 2018). |
| **Partnerships** | A means for Indigenous communities and businesses to achieve their respective stake in the Canadian economy, fulfilling a relationship between Indigenous and non-Indigenous Canadians. Partnerships can be used to leverage capital, as well as connections and expertise that lead to future economic opportunities (Blackman 2017). |
| **Reconciliation** | The process of Indigenous and non-Indigenous individuals and communities in Canada redressing issues of colonization and seeking renewed relationships based on mutual understanding and respect (Truth and Reconciliation Commission of Canada—TRCC 2015a; TRCC 2015b). |
| **Unceded territory** | Indigenous traditional and ancestral lands that were never ceded through treaty, surrender, or war. |
| **Worldviews** | Ways of knowing which influence how we self-locate or see ourselves in our environment (Indigenous Corporate Training Inc. 2016). |

**Métis History**

As part of the patriation of the Canadian Constitution in 1982, Métis were recognized as “Aboriginal” in Section 35. On September 19, 2003, the Powley case saw the Supreme Court of Canada acknowledge the existence of Métis as a distinct Aboriginal People in Canada with existing rights (e.g., Métis harvesting rights) that are protected by the *Constitution Act, 1982* *– Section 35.* Said case is notable (from a forestry and broader natural resource management perspective) in that there is a defined test to ensure how Métis communities establish a Section 35 right to hunt and who can exercise said right to hunt (Teillet n.d.). Also, it took a 17-year long court battle (*Daniels v. Canada* case) before the Supreme Court of Canada ruled in 2016 that Métis were “Indian” for the purpose of Section 91(24) of the *Constitution Act 1867* (Supreme Court of Canada 2016). One consequence of the non-recognition of Métis territorial or resource rights between 1867 and 2016 is that only First Nations’ claims to territorial or resource rights were considered by provincial or federal levels of government. Métis claims are currently under active consideration which means that while Indigenous rights to land, territory, and resources are limited to First Nations at the present time in BC, that situation will likely change in the future.

**Residential Schools in Canada**

From 1876 to 1996, Indigenous youth in Canada were forcibly removed from their families and cultures and sent to residential schools. Funded by the government and administered by Christian churches, more than 30% of Indigenous youth (approximately 150,000) were put through the residential school system with the intent to assimilate them into Euro-Canadian society. From 2008 to 2014, the TRC heard stories of abuse (e.g., mental, emotional, sexual, physical) from thousands of residential school survivors. In June 2015, the Commission released a report based on said hearings resulting in 94 Calls to Action (TRCC 2015b).

**International Perspectives on Inclusive Development and UNDRIP**

In order to better interpret the BC-based results, a review was made of international perspectives on inclusive development and UNDRIP. From a global perspective, inclusive development within the context of Indigenous rights is predominantly being progressed through the process of reconciliation between state governments and Indigenous Peoples. Although reconciliation efforts are improving worldwide, many countries are generally considered to be in the early stages of reconciliation implementation [e.g., the Truth and Reconciliation Commission of Canada, the Council for Aboriginal Reconciliation (in Australia), and the New Zealand Government Ministry of Justice, Office of Treaty Settlements and the Waitangi Tribunal]. There is distinct recognition, however, that UNDRIP provides a useful framework to guide and address reconciliation efforts (Geboe 2015).

As may be expected and despite global endorsement of UNDRIP by 149 member states of the United Nations, there is substantial variation between countries regarding the effects and implementation of UNDRIP. While some countries embraced UNDRIP [e.g., Bolivia was one of the first countries to integrate UNDRIP into its domestic law (Shaw 2017)], other countries have had minimal success in implementing the provisions of UNDRIP [as noted, for example, in Botswana, Namibia, and South Africa (Sapignoli and Hitchcock 2013)]. Overall, implementation and, in particular, enforcement of the UNDRIP provisions remain inconsistent and dependent on national law and policy.

The first instance of the incorporation of UNDRIP in international customary law took place in Belize in Central America, where the Indigenous Maya People who comprise at least 11% of the national population have only use rights to their land, territories, and resources. From the mid-1990s, representative Maya organizations have challenged the national government’s granting of logging concessions over land, territories, and resources in the Supreme Court of Belize and later, in the Inter-American Court of Human Rights—IACHR (Anaya 2004). After the government ignored the IACHR’s ruling in favour of the Maya claimants, the latter took their case again to Belize’s Supreme Court. In 2008, Supreme Court Judge Conteh made reference to Belize’s endorsement of UNDRIP in his ruling in favour of the Maya of the Toledo District (Anaya and Williams 2001).

Some Indigenous Peoples have referenced UNDRIP in conjunction with Indigenous and human rights-based protocols as a basis in legal action against governments. In the landmark case of the *Saramaka people v. Suriname* (IACHR 2007), the Inter-American Human Rights Commission and Court addressed the State of Suriname’s issuance of logging and mining concessions in the traditional territory claimed by members of the Saramaka community. The Court highlighted that although the State of Suriname adopted UNDRIP, they were in explicit violation of the Saramaka Peoples’ right to property and juridical protection. The Court unanimously ruled in favour of the Saramaka People and confirmed that the State of Suriname must grant collective territorial title rights to the members of the Saramaka People, and must effectively consult and gain free, prior, and informed consent from the Saramaka People with regards to development or investment projects that may affect the territory – and all in accordance with customary laws, traditions, and customs. The Court ruled on other aspects such as the need for impact assessments by independent entities, benefit sharing agreements, and the establishment of effective recourses against those who violate the rights of the Saramaka People.

The *Saramaka people v Suriname* case represents the first time that UNDRIP was referenced in an international human rights court after its adoption (Rombouts 2017). More recently, in November 2015, the IACHR again ruled in favour of the collective territorial rights of the Kaliña and Lokono Indigenous Peoples of Suriname, referencing Suriname’s endorsement of UNDRIP. Although the IACHR’s rulings are binding, the court itself lacks an enforcement mechanism. To date, the Governments of Belize and Suriname have disregarded the judgments of national courts and of the IACHR in favour of Indigenous claimants.

Certainly, the IACHR has been a forerunner in its rulings in favour of Indigenous rights to land, territories, and resources (LTR). In 2001, the Court’s judgment on the case of the Mayangna (Sumo) Awas Tingni Community v. Nicaragua set an important legal precedent for the LTR of Indigenous Peoples in nation states. For the first time, an international tribunal with legally binding authority found a government in violation of the communal land and resource rights of an Indigenous People. The Court ruled that Nicaragua had not “adopted effective measures to ensure the property rights of the community to its ancestral lands and natural resources” (Argüello 2001, 2). The IACHR also maintained that the government had not obtained the permission of the community to grant a logging concession on its lands and had failed to “ensure an effective remedy in response to the community’s protests regarding its property rights” (Argüello 2001, 2). For these reasons, the IACHR ruled that Nicaragua violated its obligation to respect the rights and freedoms recognized in the American Convention on Human Rights (Article 1 of the Convention) and violated the community’s right to domestic legal effects (Article 2), judicial protection (Article 25), and property (Article 21). Canada has been a member of the Organization of American States since 1990 but has not ratified the principal treaty with respect to the protection of human rights in the Americas: the American Convention on Human Rights.

Of course, getting Nation-States to accept customary practices as part of binding law is harder than treaty law for practitioners (Hunter 2014). In this context, the international consideration of UNDRIP in favourable rulings of the Belize Supreme Court and the Inter-American Court of Human Rights are landmark occurrences in the struggle towards getting UNDRIP and similar declarations recognized as customary practices and therefore normative in international law.

**References**

Anaya, S. J. 2004. International human rights and Indigenous Peoples: The move toward the multicultural state. *Arizona Journal of International & Comparative Law* 21(1):13-61.

Anaya, S. J., and R. A. Williams Jr. 2001. The protection of Indigenous Peoples’ rights over lands and natural resources under the Inter-American human rights system. *Harvard Human Rights Journal* 14:33.

Argüello, A. M. 2001. *Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua*, San José. [Http://www.corteidh.or.cr/docs/casos/articulos/seriec\_79\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf) (accessed 8 September 2018).

Burford, G., Hoover, E., Velasco, I., Janouskova, S., Jimenez, A., Piggot, G., . . . Harder, M. K. 2013. Bringing the "missing pillar" into sustainable development goals: Towards intersubjective values-based indicators. *Sustainability 5*(7): 3035-3059.

Blackman, J. 2017. *Research Indigenous partnerships: An assessment of corporate-Indigenous relations*. Ottawa: Indigenous Works.

Geboe, B. J. 2015. *Comparative approaches to reconciliations: Canada, United States of America, Australia and New Zealand*. Quebec, Canada: Institute for the Study of International Development. Https://www.mcgill.ca/isid/files/isid/pb-2015-03\_0.pdf (accessed 30 April 2018).

Government of BC. 2018a*. Apportionment and commitment reports—Allowable annual cut*. Https://www2.gov.bc.ca/gov/content/industry/forestry/forest-tenures/forest-tenure-administration/apportionment-commitment-reports-aac (accessed 30 April 2018).

Government of BC. 2018b. *Forest act [RSBC 1996] Chapter 157*. Http://www.bclaws.ca/Recon/document/ID/freeside/96157\_00 (accessed 30 April 2018).

Government of BC. 2018c. *Forest and Range Practices Act [SBC 2002] Chapter 69*. Http://www.bclaws.ca/Recon/document/ID/freeside/00\_02069\_01 (accessed 30 April 2018).

Government of BC. 2018d. *Land Act [RSBC 1996] Chapter 245*. Http://www.bclaws.ca/civix/document/id/complete/statreg/96245\_01 (accessed 30 April 2018).

Hunter, D. B. 2014. International environmental law: Sources, principles and innovations. In *Routledge handbook of global environmental politics*, ed. P. G. Harris, pp. 124-137. London: Routledge.

Indigenous Corporate Training Inc. 2016. Indigenous Peoples worldviews vs. Western worldviews. Https://www.ictinc.ca/blog/indigenous-peoples-worldviews-vs-western-worldviews (accessed 25 November 2018).

Inter-American Court of Human Rights—IACHR. 2007. *Case of the Saramaka People v. Suriname, Judgment of November 28, 2007, No. 172*.

Joseph, B. 2013. *Aboriginal engagement vs Aboriginal consultation: Here’s the difference*. Https://www.ictinc.ca/blog/aboriginal-engagement-vs-aboriginal-consultation-whats-the-difference (accessed 30 April 2018).

Minister of Aboriginal Affairs and Northern Development Canada. 2011. *Aboriginal consultation and accommodation: Updated guidelines for federal officials to fulfill the duty to consult*. Ottawa, ON: Author.

Native Nations Institute. 2018. *What is Native nation building?* Https://nni.arizona.edu/programs-projects/what-native-nation-building (accessed 30 April 2017).

Organisation for Economic Co-operation and Development—OECD. 2016. *Open government: The global context and the way forward*. Paris, France: Author.

Papillion, M., and T. Rodon. 2017. Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada. Environmental Impact Assessment Review 62:216-224.

Rombouts, S. J. 2017. The evolution of Indigenous Peoples' consultation rights under the ILO and U.N. Regimes. *Stanford Journal of International Law, 53*:169-224.

Sapignoli, M., & Hitchcock, R. K. 2013. Indigenous Peoples in Southern Africa. *The Round Table, 102*(4): 355-365.

Shaw, J. 2017. Indigenous veto power in Bolivia. *Peace Review, 29*(2):231-238.

Simms, R., M. Phare, O. M Brandes, and M. Miltenberger. 2018. Collaborative consent as a path to realizing UNDRIP. *Policy Options*, January 11.

Supreme Court of Canada. 2016. *Harry Daniels, Gabriel Daniels, Leah Gardner, Terry Joudrey and Congress of Aboriginal Peoples v Her Majesty the Queen as represented by the Minister of Indian Affairs and Northern Development and Attorney General of Canada*, Canada.

Teillet, J. n.d. *R. v. Powley: A summary of the Supreme Court of Canada reasons for judgment*. Vancouver, BC: Pape & Salter Barristers and Solicitors. [Http://www.pstlaw.ca/resources/Powley%20summary-final.pdf](http://www.pstlaw.ca/resources/Powley%20summary-final.pdf) (accessed 15 November 2018).

Truth and Reconciliation Commission of Canada—TRCC. 2015a. *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. [Http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\_Summary\_2015\_05\_31\_web\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf) (accessed 8 September 2018).

Truth and Reconciliation Commission of Canada—TRCC. 2015b. *Truth and Reconciliation Commission of Canada: Calls to action.* [Http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\_to\_Action\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf) (accessed 21 April 2018).

United Nations. n.d. *Who are Indigenous peoples?* New York City, New York: United Nations.