

# True, Lasting Reconciliation

Implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in British Columbia law, policy and practices



Union of British  
Columbia Indian Chiefs



  
CCPA  
CANADIAN CENTRE  
for POLICY ALTERNATIVES  
BC Office

Canadian Centre for  
Policy Alternatives

# TRUE, LASTING RECONCILIATION

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November 2018

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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.

401 – 312 Main Street Vancouver, BC V6A 2T2  
604.684.0231 | [ubcic@ubcic.bc.ca](mailto:ubcic@ubcic.bc.ca)  
[www.ubcic.bc.ca](http://www.ubcic.bc.ca)

### 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.

520 – 700 West Pender Street Vancouver, BC V6C 1G8  
604.801.5121 | [ccpabc@policyalternatives.ca](mailto:ccpabc@policyalternatives.ca)  
[www.policyalternatives.ca](http://www.policyalternatives.ca)

### Publishing team

Jean Kavanagh, Ellena Neel, Terra Poirier  
Layout: Paula Grasdal  
Copyedit: Lucy Kenward

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“Indigenous Rights are human rights. We call on federal, provincial and municipal governments to truly commit to the true spirit and intent of the UN Declaration as a fundamental international human rights instrument to advance human rights for Indigenous peoples as a framework for justice and reconciliation. It is crucially important that our inherent Title, Rights and Treaty Rights are recognized and affirmed in all processes Canada and BC engages in with Indigenous peoples. When our inherent Title, Rights and Treaty Rights are entirely disregarded or domestically diluted, governments are liable.”<sup>1</sup>

—**Grand Chief Stewart Phillip**

“[The BC government] fully recognizes that the [UN Declaration] is essential to the future of Indigenous peoples here in British Columbia.... It is a pivotal moment in our province and in our country.... Our government understands the enormous responsibility we have to Indigenous peoples, in the face of historical wrongs that have never been made right and in the wake of inaction by government after government.”<sup>2</sup>

—**Premier John Horgan**

“As part of our commitment to true, lasting reconciliation with First Nations in British Columbia our government will be fully adopting and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Calls to Action of the Truth and Reconciliation Commission. As minister, you are responsible for moving forward on the calls to action and reviewing policies, programs, and legislation to determine how to bring the principles of the declaration into action in British Columbia.”<sup>3</sup>

—**Excerpt from 2017 mandate letters given to all new BC government ministers**

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1 Grand Chief Stewart Phillip, “Statement from Grand Chief Stewart Phillip on Human Rights Day,” Union of BC Indian Chiefs website, December 10, 2017, [https://www.ubcic.bc.ca/humanrightsday\\_sitec](https://www.ubcic.bc.ca/humanrightsday_sitec).

2 Office of the Premier of British Columbia, “Statement from Premier John Horgan on the 10th anniversary of the UN Declaration on the Rights of Indigenous Peoples,” September 13, 2017, [https://archive.news.gov.bc.ca/releases/news\\_releases\\_2017-2021/2017PREM0083-001562.htm](https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2017PREM0083-001562.htm).

3 Office of the Premier of British Columbia, mandate letters for individual ministers, July 18, 2017, <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/cabinet/cabinet-ministers>.



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# Executive summary

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**Fundamental to the UN Declaration is that government must move from a “duty to consult” to a genuine process of obtaining free, prior and informed consent of Indigenous Nations.**

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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. This report 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 this report 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.

This 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*.

This report 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 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

## 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.

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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>.

**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*.**

**A core  
element of  
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is that the *UN  
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in BC law.**



comprises the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs). Among this 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.

# Introduction

## What has brought us to this moment

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THE *UN DECLARATION* IS THE PRODUCT OF AN EXTENSIVE, comprehensive, democratic and deliberative process involving representatives of Indigenous peoples from around the world, working with States and UN experts, and it is the most far-reaching universal instrument specifically addressing the human rights of the world's Indigenous peoples. It was adopted by the UN General Assembly on September 13, 2007, after more than 20 years of negotiations, and it consists of a preamble and 46 articles (and must always be considered as a whole, including the preamble). In short, it provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples, who face historical and ongoing violations rooted in colonialism.

In Canada, subsequent federal governments have articulated different and changing positions on the *UN Declaration*; however, discussion of these political changes is outside the scope of this paper. Although the government of Canada voted against the *UN Declaration* at the General Assembly in 2007, it ultimately did issue an official statement of endorsement in November 2010, reversing its initial position.<sup>4</sup> More importantly, though, unilateral statements made by the federal government do not affect the legal status of the *UN Declaration* in Canada. Provisions in the *UN Declaration* reflect what is known as customary international law—legal standards that have become obligatory for States through widespread use.

A turning point in Canada's understanding and recognition of the *UN Declaration's* significance came with the final report of the Truth and Reconciliation Commission in 2015. In Call to Action 43, the TRC calls on federal, provincial, territorial and municipal governments to adopt and implement the *UN Declaration* as "the framework" for reconciliation. Therefore, the TRC's purpose, as articulated by the Calls to Action, is inseparably linked to the *UN Declaration*; one cannot say, "I support the TRC Calls to Action but not the *UN Declaration*."

**The *UN Declaration* is the most far-reaching universal instrument specifically addressing the human rights of the world's Indigenous peoples.**

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<sup>4</sup> Indigenous and Northern Affairs Canada, "Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples," November 12, 2010, <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>.

**The *UN Declaration* is now the single most important framework for reconciliation in this country.**

The *UN Declaration* is now the single most important framework for reconciliation in this country. Canadian courts are beginning to demonstrate the importance and relevance of the *UN Declaration* in the interpretation of Canadian laws, and there is growing jurisprudence using the *UN Declaration*.<sup>5</sup> The *UN Declaration* can help us advance the unfinished business of decolonization and establish just and proper Nation-to-Nation and government-to-government relations in Canada.

## Learning about the *UN Declaration*

The first step in implementing the *UN Declaration* is for all British Columbians to read it (Appendix A). A PDF version of the *UN Declaration* is available at: [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

Alternatively, you can watch Indigenous peoples around the world read aloud a shortened version of the *UN Declaration* here: <https://vimeo.com/51598291>.

A simplified version, with pictures, is available here: [http://files.unicef.org/policyanalysis/rights/files/HRBAP\\_UN\\_Rights\\_Indig\\_Peoples.pdf](http://files.unicef.org/policyanalysis/rights/files/HRBAP_UN_Rights_Indig_Peoples.pdf).

To access the *UN Declaration* in other languages, and to learn more about the history and background of the document, please visit: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> or <https://www.declarationcoalition.com/more-info/>.

## What progress has been made on implementing the *UN Declaration* in BC?

The BC provincial government, working with Indigenous Nations and organizations, has already made some progress toward the implementation of the *UN Declaration*. Following the electoral victory of the NDP-Green alliance, implementation of the *UN Declaration* has now become a focal point of British Columbia policy development. The Premier and ministers have already made explicit statements in support of fully adopting the *UN Declaration*; mandate letters and the Confidence and Supply Agreement (which cemented the NDP and the Green Party coalition) also express their support.<sup>6</sup> The Confidence and Supply Agreement confirmed:

A foundational piece of this relationship is that both caucuses support the adoption of the *UN Declaration* on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission calls-to-action and the Tsilhqot'in Supreme Court decision. We will ensure

5 For example, in *First Nations Child and Family Caring Society v. Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada (INAC)), 2018 CHRT 4, the judgement cites the *UN Declaration*. Likewise, in *Hamilton Health Sciences Corp. v. D.H.*, 2015 ONCJ 229, para. 5, the judgement cites Article 24 of the *UN Declaration*. Other recent decisions also cite the *UN Declaration*.

6 Confidence and Supply Agreement Secretariat, 2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus, May 30, 2017, [http://bcndpcaucus.ca/wp-content/uploads/sites/5/2017/05/BC-Green-BC-NDP-Agreement\\_vf-May-29th-2017.pdf](http://bcndpcaucus.ca/wp-content/uploads/sites/5/2017/05/BC-Green-BC-NDP-Agreement_vf-May-29th-2017.pdf).

the new government reviews policies, programs and legislation to determine how to bring the principles of the Declaration into action in BC.

In the span of a decade, we have moved from the *UN Declaration* being largely absent from political and public discourses in BC, to being fully endorsed by the federal and provincial governments and becoming a major policy focus. These statements have helped to make the *UN Declaration* a point to be addressed in negotiations and agreements and to set a broad legislative and policy agenda that includes implementation.

## The role of the Crown

### Why implementation of the *UN Declaration* is a provincial issue

When the *UN Declaration* refers to “States,” this has implications in Canada for both levels of the Canadian “Crown”—the federal government and provincial governments. The *UN Declaration* addresses topics which, under the Constitution Act, 1982, would primarily fall within provincial jurisdiction, and as such, provincial governments will have to play a fundamental role in implementation, including actions related to lands and resources (forestry, mines, energy, etc.), children and family services, environmental protection, housing, social development, administration of justice, health care, education, agriculture, heritage, labour and skills development, emergency services and more.

Given this lack of action for a decade, it has only been a little over a year since we have had a government in British Columbia explicitly committed to putting the *UN Declaration* into action. As such, there is only a limited amount of activity to be considered; however, some of the directions already being pursued are beginning to come into focus. Progress on three categories of implementation action can be observed to date.

**1. Explicit statements of support and adoption of the *UN Declaration* have been made, and implementation of the *UN Declaration* has been introduced as a legitimate topic to be addressed in negotiations and agreements.** In its first throne speech in September 2017, the BC NDP government stated:

Working with First Nations and all Indigenous communities, your government will embrace the United Nations Declaration of the Rights of Indigenous Peoples, and address all of the Calls to Action issued by the Truth and Reconciliation Commission into residential schools.<sup>7</sup>

In the 2017 mandate letter to every minister, BC Premier Horgan included the following language:

As part of our commitment to true, lasting reconciliation with First Nations in British Columbia our government will be fully adopting and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Calls to Action of

**In the span of a decade, we have moved from the *UN Declaration* being largely absent from political and public discourses in BC, to being fully endorsed by the federal and provincial governments and becoming a major policy focus.**

<sup>7</sup> The Honourable Judith Guichon, Speech from the Throne, Province of British Columbia, September 8, 2017, [https://www.leg.bc.ca/content/data%20-%20dp/Pages/41st2nd/ThroneSpeech\\_Sept2017.pdf](https://www.leg.bc.ca/content/data%20-%20dp/Pages/41st2nd/ThroneSpeech_Sept2017.pdf).

the Truth and Reconciliation Commission. As minister, you are responsible for moving forward on the calls to action and reviewing policies, programs, and legislation to determine how to bring the principles of the declaration into action in British Columbia.<sup>8</sup>

These are just a few of the now-commonplace statements by the provincial government committing to the endorsement and full implementation of the *UN Declaration*. In October 2017, Minister of Indigenous Relations and Reconciliation Scott Fraser outlined a new approach to negotiations with First Nations in a letter to his Deputy. Specifically, the letter stated:

I want to ensure that staff have the ability to explore topics and approaches that have, to date, been considered out of scope, including aspects of Indigenous roles in decision making, and mechanisms to collaboratively implement rights and title....

When working with First Nations, our discussions will be grounded in the recognition of rights and title. The United Nations Declaration on the Rights of Indigenous Peoples, the Truth and Reconciliation Commission Calls to Action, and case law will guide our way.<sup>9</sup>

**2. A broad legislative and policy agenda has been set that includes implementation of the *UN Declaration*.** The 2015 Commitment Document between the BC Cabinet and BC First Nations Leadership Council, which had only made passing reference to the *UN Declaration*, was jointly amended in July 2018 to make implementation of the *UN Declaration* a focus (see Appendix B). In particular, language was added to jointly pursue provincial legislation similar to the federal Bill C-262, An Act to ensure that the laws of Canada are in harmony with the *United Nations Declaration on the Rights of Indigenous Peoples*.

## The Commitment Document

The Commitment Document between the BC government and the BC First Nations Leadership Council has been approved by First Nations political organizations and endorsed by the BC Cabinet and work is beginning. It includes a Shared Vision, Guiding Principles, Goals and Objectives (“Vision”) and Concrete Actions: Transforming Laws, Policies, Processes and Structures. Through the Commitment Document, First Nations and the BC government assert their ongoing commitment to “a government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights” and to the “reconciliation of Aboriginal and Crown titles and jurisdiction.” The Concrete Actions include implementation of the *UN Declaration*; establishment of an Indigenous commission, and design and implementation of new models that recognize Aboriginal Title and Rights and the *UN Declaration*; design and implementation of new model(s) of fiscal relations; legislation, policy and practice review and reform; new approaches to effective negotiations and dispute resolution; and actions to address reconciliation in BC. The recommendations in this report are intended to support the agreed upon actions outlined in the Commitment Document (See Appendix B).

<sup>8</sup> Office of the Premier of British Columbia, mandate letters for individual ministers, July 18, 2017, <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/cabinet/cabinet-ministers>.

<sup>9</sup> Correspondence shared with the Union of BC Indian Chiefs.

Bill C-262, a federal private member's bill advanced by NDP MP Romeo Saganash, which has now won the support of the federal government and which has widespread support from Indigenous peoples and organizations across the country, confirms the application of the *UN Declaration* in Canadian law and establishes a requirement for a national action plan and reporting mechanism to ensure the laws of Canada are aligned with the *UN Declaration*. The bill is now moving through Parliament.

Provincial legislation using Bill C-262 as a minimum will provide a legislative foundation to ensure the ongoing work of implementing the *UN Declaration* in British Columbia. The goal is to embed the *UN Declaration* in BC law and to provide a framework for ensuring that all past and future BC laws, policies and government practices are compliant with the *UN Declaration*. It is expected that such legislation could be passed as soon as Spring 2019.

## **Bill C-262**

### ***An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples***

Bill C-262, a private member's bill advanced by MP Romeo Saganash, has widespread support from Indigenous peoples, governments and organizations across the country. Bill C-262 confirms the application of the *UN Declaration* in Canadian law and establishes a requirement for a national action plan and reporting mechanism to ensure the laws of Canada are aligned with the *UN Declaration*. Originally drafted as an opposition bill under the previous federal government, the bill now has the support of the Trudeau Liberal government and is moving through Parliament. In the words of Romeo Saganash:

Bill C-262 is probably the most important bill Parliament has considered in a long time.... When I was travelling across Canada, many Canadians asked me questions about this Declaration. Once they understood it, Canadians wanted the framework for reconciliation to be based on this document, which took two decades to negotiate and to be drafted. That is why I am saying that Canadians want reconciliation. They believe in the importance of justice for Canada's indigenous peoples. It is 2018 and they believe that it is finally time to recognize that indigenous rights are also human rights. A country such as Canada must support the rights enshrined in the *UN Declaration*. Bill C-262 is a bill of reconciliation. All parties in the House have expressed their support for the report of the Truth and Reconciliation Commission and its 94 Calls to Action. This bill proposes to implement two of the most important calls to action of the report. That is what Bill C-262 attempts to do, and that is what all parties also wanted to accomplish with the United Nations Declaration on the Rights of Indigenous Peoples.

3. Groundwork has begun to be laid for a transformation in the culture, modes of functioning and orientation of the public service through the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*, released in May 2018. The Draft Principles open with the following statement:

**The four-point action plan in this report outlines the key ways that BC can move forward in implementing the UN Declaration.**

The Province wants to renew its relationship with Indigenous peoples in BC, and affirms its desire to achieve a government-to-government relationship based on respect, recognition and exercise of Aboriginal title and rights and to the reconciliation of Aboriginal and Crown titles and jurisdictions. We agree to work with Indigenous peoples to jointly design, construct and implement principled, pragmatic and organized approaches informed by the Supreme Court of Canada Tsilhqot'in decision and other established law, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Truth and Reconciliation Commission (TRC) Calls to Action.<sup>10</sup>

These are important steps, but they are, at this point, the seeds of a new direction. They are the starting points for change—in public understanding and awareness, negotiations and agreements, legislation and policy, and culture, process and structure of government. But as of yet, a clear and comprehensive implementation agenda has not been set, and many of the steps that have been taken, with the exception of the few actual agreements completed, represent commitments, aspirations and intentions.

This report encourages an embrace of the shift that has occurred and places a focus on the practical and co-operative implementation of the *UN Declaration* through a range of actions. The four-point action plan in this report outlines the key ways that BC can move forward in implementing the *UN Declaration*. These include:

1. Creating a legislative framework for implementation of the *UN Declaration*;
2. Putting the focus on Indigenous self-determination and the recognition of Indigenous legal systems<sup>11</sup> throughout implementation;
3. Taking tangible steps on the ground to turn words into action; and,
4. Engaging in public education and outreach to raise awareness of the *UN Declaration* in BC.

## Terminology

“Indigenous” is the term used internationally to describe the original or first peoples in different countries around the world. Canada’s Constitution refers to Indigenous peoples as “Aboriginal” peoples, which include First Nations, Inuit and Métis peoples. The Supreme Court of Canada uses both terms interchangeably.

10 Government of British Columbia, *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples*, May 22, 2018, [https://www2.gov.bc.ca/assets/gov/careers/about-the-bc-public-service/diversity-inclusion-respect/draft\\_principles\\_intro\\_faq.pdf](https://www2.gov.bc.ca/assets/gov/careers/about-the-bc-public-service/diversity-inclusion-respect/draft_principles_intro_faq.pdf); [https://news.gov.bc.ca/files/6118\\_Reconciliation\\_Ten\\_Principles\\_Final\\_Draft.pdf](https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf).

11 It is critical to note the difference between “Indigenous laws and legal systems” versus Canadian “Aboriginal law.” The latter refers to Canadian State interactions with Indigenous peoples under existing Canadian law. In contrast, “Indigenous law” is the unextinguished legal traditions of Indigenous peoples (which has been recognized by Canadian courts). For more on Indigenous legal systems and traditions, see Val Napoleon, “Thinking about Indigenous Legal Orders,” available at: [http://fngovernance.org/ncfng\\_research/val\\_napoleon.pdf](http://fngovernance.org/ncfng_research/val_napoleon.pdf).

## Six foundations for the general implementation of the *UN Declaration*

The implementation of the *UN Declaration* is pivotal to the future of Canada and British Columbia and has the potential to greatly accelerate the work of reconciliation by providing internationally adopted, transparent, clear and effective standards, as well as a common language and set of understandings that all Canadians can embrace. To meaningfully implement the *UN Declaration* in BC, four foundational concepts are key.

First, from the beginning, implementing the *UN Declaration* must take place in full partnership and co-operation with Indigenous peoples, including the co-development and co-drafting of a BC legislative framework for the *UN Declaration*. Second, the implementation of the *UN Declaration* is grounded in Indigenous peoples' right to self-determination and the recognition of Indigenous legal systems. Implementation will look different in different places. The efforts of governments or other actors cannot, in any way, 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. Third, the *UN Declaration* articulates the minimum standards for the survival, dignity and well-being of Indigenous peoples. As such, it is meant to be implemented in its entirety, not article by article, or exclusive of the preamble. Finally, it is crucial to understand that no single piece of legislation, policy or other type of agreement can fully implement the *UN Declaration*. No "one size fits all" model of Crown-Indigenous relations exists.

It is also important to underline that Indigenous Rights are inherent or pre-existing. The *UN Declaration* does not create any new rights. As indicated in the preamble of the *UN Declaration*, there is an "urgent need to respect and promote the inherent rights of indigenous peoples." Where national laws and policy contradict and fall below the minimum standards set out in the *UN Declaration*, these laws and policies need to be reformed. They should not be used as an excuse to ignore or circumvent the requirements of the *UN Declaration*. At the same time, the *UN Declaration* is explicit that where existing laws, policies, Treaties or other arrangements already provide human rights protections that meet or exceed the minimum standards set out in the *UN Declaration*, these protections must not be lowered in any way. Article 45 states: "Nothing in this

**Implementing the *UN Declaration* must take place in full partnership and co-operation with Indigenous peoples, including the co-development and co-drafting of a BC legislative framework for the *UN Declaration*.**

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### **American Declaration on the Rights of Indigenous Peoples**

Another key development is the *American Declaration on the Rights of Indigenous Peoples*, which was adopted by the Organization of American States by consensus in June 2016. The *American Declaration* is a regional human rights instrument that applies to North, South and Central America and the Caribbean. Many of the provisions in the *American Declaration* mirror, and therefore reinforce, those in the *UN Declaration*. Indigenous peoples in the Americas now have two declarations that explicitly affirm and elaborate upon their human rights and related State obligations. In any specific situation, the minimum standard is the one that is higher in these two human rights instruments.

Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.”<sup>12</sup>

There are six ways to concretely address the general implementation of the *UN Declaration* in BC. These are outlined in chart form below, with corresponding summaries of why implementation must be carried out in these ways.

Where national laws and policy contradict and fall below the minimum standards set out in the *UN Declaration*, these laws and policies need to be reformed.

Foundations for the general implementation of the <i>UN Declaration</i>	
Foundation	Summary
1. Implementation of the <i>UN Declaration</i> must be done through collaborative efforts between Crown governments and Indigenous peoples.	<p>Implementation of the <i>UN Declaration</i> in its entirety must be done together or it will fail.</p> <p>If a Crown government develops legislation or policy without working with Indigenous peoples, it would be inconsistent with the <i>UN Declaration</i> itself.</p>
2. Implementation of the <i>UN Declaration</i> must facilitate and create legal and policy space for diverse, flexible and dynamic structures, processes, mechanisms and patterns of relations between Crown governments and Indigenous peoples.	<p>Indigenous self-determination is the antithesis of colonialism and is at the heart of the <i>UN Declaration</i>.</p> <p>Indigenous Nations need to be given the space and resources to determine their own pathways to self-determination.</p> <p>Crown governments need to step back and create space for self-determination and self-government to happen.</p> <p>If Crown governments continue to define, prescribe and regulate the ways Indigenous Nations engage in self-government, the implementation of the <i>UN Declaration</i> will fail.</p>
3. Implementation of the <i>UN Declaration</i> requires leadership by Indigenous peoples as well as Crown governments.	<p>Everyone needs to play their part in the implementation process.</p> <p>Indigenous peoples must be engaged in rebuilding their communities, Nations and governments, and strengthening and revitalizing their political, legal, social and economic institutions.</p> <p>Processes of rebuilding must adhere to existing Indigenous laws and standards, not the Crown standards imposed upon Indigenous peoples (i.e., the Indian Act).</p> <p>Indigenous peoples must lead this work.</p> <p>Crown governments have a responsibility to finance and properly resource the rebuilding of Indigenous communities.</p>

12 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, March 2008, [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<p>4. Implementation of the <i>UN Declaration</i> must not become focused on trying to strictly define meanings and terms, and must be taken in its entirety.</p>	<p>The <i>UN Declaration</i> articulates broad, overarching standards that must be respected but does not prescribe exact definitions for all terms.</p> <p>The path to implementation is not to define and prescribe meanings to it; as such, definition exercises are unproductive and contrary to the work at hand.</p> <p>Engaging in definition exercises does not respect the fact that Indigenous Nations are diverse and varied and at different stages in self-government work.</p> <p>Engaging in definition exercises would remove the space that the <i>UN Declaration</i> provides for diverse forms of implementation and would alter the strength and nature of the document.</p>
<p>5. Implementation of the <i>UN Declaration</i> requires a shift in mindset on how Crown-Indigenous relations are approached, with a focus on the recognition of Title and Rights.</p>	<p>Historically, Crown-Indigenous relations have forced Indigenous peoples into court to prove “whether” their rights existed or not.</p> <p>Crown-Indigenous relations need to shift from being conflict-based to being collaborative, and from being “consultation-based” to “consent-based.”</p> <p>Crown governments need to recognize and affirm the rights articulated in the <i>UN Declaration</i>.</p>
<p>6. Implementation of the <i>UN Declaration</i> includes roles for industry, civil society and the general public.</p>	<p>As evidenced by the TRC’s 94 Calls to Action, other members of Canadian society have critical roles to play in implementation.</p> <p>The TRC’s 94 Calls to Action state that the <i>UN Declaration</i> is the framework for reconciliation and should be a basis for learning and action among professionals, organizations and the general public.</p> <p>The TRC’s 94 Calls to Action define specific actions for industries and corporations, lawyers, educators, journalists, doctors, churches and other members of Canadian society.</p>

Additional principles for implementation include:

1. The recognition that Indigenous peoples have suffered from historic injustices as a result of their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.
2. The recognition that control by Indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.
3. The recognition that acknowledgement of the rights of Indigenous peoples in the *UN Declaration* will enhance harmonious and collaborative relations between the State and Indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.

# Action plan to implement the *UN Declaration* in BC

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**The *UN Declaration* must be implemented comprehensively, and not through a limited, disconnected, article-by-article approach.**

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THE FOLLOWING FOUR-POINT PLAN IS PRESENTED FOR CONSIDERATION by Indigenous peoples, government, industry and the public at large as actions that should be pursued for the implementation of the *UN Declaration* in BC. Foundational to the plan is that implementation of the *UN Declaration* must take place in partnership and co-operation with Indigenous peoples. Furthermore, the *UN Declaration* must be implemented comprehensively, and not through a limited, disconnected, article-by-article approach. Meaningful implementation must include co-development and co-drafting of a BC legislative framework for the *UN Declaration*, and strategies and actions must be set jointly in a collaborative manner. The suggested four-point plan is simply a set of ideas and proposals for consideration as that vital work unfolds and accelerates. As well, there exists no single legislation, policy or type of agreement that can implement the *UN Declaration*. It is a highly complex endeavour that requires changes at all levels, over time, in order to be fully implemented. This includes changes in the orientation, attitude and patterns of action in governments and society at large. The suggested four-point plan, outlined in full below, is intended to speak to how to build such a multi-pronged, coherent and systematic approach.

The four-point action plan for the implementation of the *UN Declaration* in BC

Action	Summary
<p>1. Establish a preliminary legislative foundation as soon as possible that brings transparency, coherence and a measure of accountability to the process, as part of a broader long-term approach to legislative change.</p>	<p>Foundational legislation developed in full co-operation with Indigenous peoples will provide a transparent, coherent and binding path to implementation.</p> <p>Bill C-262 is a logical starting place for this legislation, as it provides a confirmation of legal application in BC; a legislated requirement for an orderly, clear and transparent process of implementation; and a recognition of the need for oversight and accountability frameworks.</p> <p>Establishment of legislation should be reflective of a new approach to litigation regarding Indigenous Rights: collaboration, not conflict.</p>
<p>2. Support a central focus on Indigenous peoples choosing how they will organize and govern themselves consistent with the right to self-determination.</p>	<p>Indigenous self-determination is foundational to the <i>UN Declaration</i>.</p> <p>Historically, self-government agreements have been paternalistic and subject to discriminatory colonial policies.</p> <p>Advancing Indigenous self-government will require the BC government to invest in the work being implemented by Nations.</p> <p>The right to self-determination necessarily includes the recognition and revitalization of Indigenous laws and legal systems.</p> <p>The BC government should support this work apart from achieving agreements on other outcomes (i.e., resources), and without demanding a prescribed Crown role in the rebuilding effort.</p>
<p>3. Take tangible steps to turn words into action through a diverse range of implementation initiatives that reflect the minimum standards in the <i>UN Declaration</i>.</p>	<p>There is no “one size fits all” approach to implementation; it will differ based on the context and the community.</p> <p>As such, it would be beneficial for Indigenous Nations and Crown governments to advance new models of consent-based agreements in a number of different areas, such as aquaculture and community-industry agreements.</p> <p>A legislative amendment could be made to allow decision-makers to enter into agreements and arrangements with Indigenous Nations, allowing legislative space for self-government (see more below).</p>
<p>4. Develop tools that entrench an understanding, respect and appreciation of the <i>UN Declaration</i> in society at large.</p>	<p>For implementation to be successful, the general public must be able to participate in discourse about the <i>UN Declaration</i> at the same level as other pieces of foundational legislation such as the Canadian Charter of Rights and Freedoms (Constitution Act, 1982).</p> <p>To do so, human rights education needs to be implemented and tools need to be developed (including school-based curricula) to properly educate the Canadian public on the <i>UN Declaration</i>.</p>

## Action One: Legislative framework

**Establish a preliminary legislative foundation as soon as possible that brings transparency, coherence and a measure of accountability to the process, as part of a broader long-term approach to legislative change.**

In Canada, legislation has been a main tool of colonization of Indigenous peoples. In 2018, the primary legislation regarding First Nations is the Indian Act—a colonial enactment that has a role in all aspects of Indigenous life, from establishing the reserve system and the former residential school system to limiting basic rights and freedoms, including rights related to movement, voting, equal treatment, the hiring of lawyers, etc. More broadly, federal and provincial laws—with almost no exceptions—reflect a presumption that Indigenous Rights, protected by the Constitution Act, 1982, do not exist. This is seen, for example, in all of British Columbia’s land and resource laws, which effectively have been drafted and are implemented as if Aboriginal Title and Rights in British Columbia have been extinguished or surrendered or have no legal force or effect. It is for this reason, for example, that the Supreme Court of Canada in the *Tsilhqot’in Nation* decision found the provincial Forestry Act to infringe on Aboriginal Title, and to not apply on Aboriginal Title lands.

To alter this historical and ongoing use of legislation to deny or limit Indigenous Rights, legislative change is needed. Laws and their impacts cannot be changed through policies, practices or agreements. Only changes to the law itself can accomplish this.

Legislation is enacted through transparent, deliberative and democratic processes. Legislation is also, generally, enduring. It cannot easily be changed or altered without full public and legislative vetting—unlike policies and practices—or simply ignored. Institutions are charged with following and enforcing the law, and if the law is to change it similarly must go through a public, transparent and deliberative process.

With respect to implementation of the *UN Declaration*, all of these elements that characterize legislation are vital. As outlined earlier, implementation of the *UN Declaration* is an ongoing process and will require many different types of actions. Foundational legislation is critical on this journey. It can provide a transparent, coherent, binding and enduring process through which the *UN Declaration* is implemented. It can bring coherence and systematic effort to the way forward.

What might such legislation look like? Bill C-262 is a logical starting place. It would provide:

1. A confirmation of the legal application of the *UN Declaration* in British Columbia—which reflects already-established principles as to how international declarations can be used to interpret domestic law;
2. A legislated requirement for an orderly, transparent and clear process over time for implementing the *UN Declaration*; and
3. A recognition of the need for oversight and accountability to ensure this work is being done over time.

**Legislation is generally enduring. It cannot easily be changed or altered without full public and legislative vetting.**

## Co-developing legislation and policy<sup>13</sup>

The history of legislative and policy development in Canada has primarily been one of Crown governments unilaterally developing and drafting legislation and policy that has an impact on Indigenous peoples and their rights, and imposing it. Of course, the Indian Act is the archetype of such legislation, but it is also the case in dozens, if not hundreds, of pieces of legislation across the country, including recent ones.

Such a practice violates the basic standards of the *UN Declaration* including Article 19, which states that “States shall consult and cooperate 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.”

While there are increasingly examples of governments seeking to work with Indigenous peoples in the development of new laws and policies, finding mechanisms and processes for the actual co-development and co-drafting of legislation remains a work in progress.

A “co-development” process cannot ask for input from Indigenous peoples after a law or policy has already been drafted. Indigenous peoples cannot be treated as an afterthought or an extra step in the legislative process; a true Nation-to-Nation relationship views Indigenous peoples and governments as full partners in shaping laws and policies that have an impact on them and their rights. Formalized processes and structures should be established to ensure that laws and policies are developed in partnership, with measures that ensure that rights are recognized and respected before laws and policies are enacted.

**Indigenous peoples cannot be treated as an afterthought or an extra step in the legislative process.**

While Indigenous peoples have broadly endorsed and advocated for Bill C-262, areas of improvement and strengthening have also been identified. In the BC context, a number of additional ideas have been advanced that should be considered as Indigenous peoples and the BC government co-operate on a BC legislative framework for the *UN Declaration*:

- The preamble to the legislation could properly tell the story of the period prior to the founding of Canada, when Indigenous peoples governed and owned the lands and resources that now make up British Columbia; the colonial history of Canada; the repudiation of colonial doctrines that justified the ill-treatment of Indigenous peoples; the leadership and advocacy of Indigenous peoples to overcome these longstanding

<sup>13</sup> On October 11, 2018, the Supreme Court of Canada (SCC) released its decision in *Mikisew Cree First Nation vs. Canada* (2018 SCC 40), holding that under current Canadian law, drafting legislation does not trigger the duty to consult First Nations. This decision reflects the status quo and underscores the importance of embedding the *UN Declaration* in Canadian law. The *Mikisew* decision is contrary to Article 19 of the *UN Declaration* and Article XXIII of the *American Declaration*. However, the SCC also held that their decision in *Mikisew* “does not mean the Crown is absolved of its obligation to conduct itself honourably.” Their judgement also notes that “Unilateral action is the very antithesis of honour and reconciliation, concepts which underlie both the duty to consult and the very premise of modern Aboriginal law.” [para 87] In other words, government obligations may begin with the Constitution, but they do not end there. Implementing the *UN Declaration* would transform Crown-Indigenous relations in the spirit of reconciliation.

**The framework legislation must ensure that all past laws and policies are assessed with an eye to compliance with the *UN Declaration*.**



injustices; the key events and milestones on the work for change; and the shifting moment we are presently inaugurating. Such a preamble will help inform how the bill is interpreted and understood, and will itself be a tool of reconciliation. It can also help educate the public about the true history of Canada.

- While aligning legislation with the *UN Declaration* is vital, proposed legislation could consider the inclusion of references to “policies” and “operational practices or government practices” as well. Doing so would reflect the reality that much of what informs government action regarding Indigenous peoples are policies and practices, in addition to legislation. As well, it would speak to fact that it remains to be seen how much legislative change will be the tool for structuring proper relationships based on the *UN Declaration*, and how much will be more appropriately advanced through policy and practices. Requiring an Action Plan that speaks to changes in laws, policies and practices (as part of a broader plan for the implementation of the *UN Declaration*) would achieve this goal, along with an explicit commitment that a systematic review of all laws, policies and practices in consultation and co-operation with Indigenous peoples take place as part of the Action Plan. In short, the framework legislation must ensure that all past laws and policies are assessed with an eye to compliance with the *UN Declaration*.
- The fully justifiable lack of trust that Indigenous peoples have of government action should be a lens for considering a BC legislative framework for the *UN Declaration* and how the bill might address that. In this regard, consideration should be given to stronger and more independent approaches to government oversight and accountability in the implementation of the *UN Declaration* and the Action Plan required under the bill. Instead of annual reporting from a relevant minister, an independent mechanism for oversight—such as a commission with mechanisms for participation by Indigenous peoples or a dedicated independent representative with a duty to consult with Indigenous peoples—could help provide a foundation for moving forward collaboratively over time. Ultimately, what might be established is an institutional mechanism that can provide independent accountability, transparency, annual reporting on progress and oversight of the implementation of the *UN Declaration*, including by drawing on Indigenous laws and knowledge, international law and constitutional law. Such an institution would have to be co-developed over time with Indigenous peoples. A provincial legislative framework for the *UN Declaration* could enable, but not prescribe, the details of its creation, and a mandate for the co-development of the commission or representative in a fixed period of time (e.g., 12 months).
- BC is one of the only jurisdictions that has previously made efforts at legislative change to reflect Indigenous Rights—in 2008/2009, the First Nations Leadership Council and the BC Liberal government pursued the Recognition and Reconciliation Act, which was perhaps ahead of its time. Moreover, the impact of the *UN Declaration* as a framework to assist and guide the understanding of the changes required was not fully understood. The *UN Declaration* was developed and promoted with leadership from British Columbia Chiefs, but the focus had not yet shifted to informing Canadians and British Columbians about the *UN Declaration* and the value of a human rights lens to make progressive and lasting change. From this process, it is clear that many legislative efforts will be required over time to effect a fundamental shift from patterns of Crown denial to Crown recognition, and that a single statute that attempts to reset all elements at once creates an increased likelihood of confusion, misinformation and conflict about how to proceed. For this reason, pursuing a bill that builds on C-262—which is relatively modest in its aspirations and itself acknowledges the need for further legislative work—is a good start. At

the same time, engagement, co-development and planning should include consideration from the outset about how Bill C-262 fits into a larger matrix of legislative shifts that will be needed, and what the broad outline of future efforts and areas to be addressed may look like. This will allow Indigenous peoples, government, industry and all stakeholders to evaluate more openly and honestly the overall directions that are being pursued.

Establishment of foundational legislation should be complementary and reflective of a new approach to litigation regarding Indigenous Rights. The Attorney General of British Columbia must take positive and constructive steps in this direction by establishing new guidance for Crown lawyers on the conduct of potential litigation with Indigenous peoples. This direction should include an emphasis on, and new tools for, the proactive resolution of disputes prior to litigation; limitations on the use of technical defences; collaborative approaches to structuring and streamlining litigation to limit costs, time and focus on tangential issues that avoid or distract from the core, substantive legal issues in dispute; new approaches to pleadings that end denial of Indigenous peoples and their rights; and a focus on reflecting the standards of the *UN Declaration* in how litigation advances and is pursued.

## Action Two: Self-determination at the centre

**Support a central focus on Indigenous peoples choosing how they will organize and govern themselves consistent with the right to self-determination.**

Indigenous self-determination and self-government are foundational to the implementation of the *UN Declaration*. The recognition and revitalization of Indigenous laws and legal systems, alongside the work of Indigenous peoples organizing and reconstituting as Title and Rights holders, is critical for free, prior and informed consent and other elements of the *UN Declaration* to be fully engaged. International law makes clear that all peoples have the right to self-determination, as affirmed in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. International treaty bodies have repeatedly concluded that this right applies to Indigenous peoples. The international law principle of “equal rights and self-determination of peoples” applies to Indigenous peoples globally, as does the right of self-determination in international law.

Historically, Crown governments have been tangibly hostile to this work. Colonial laws and policies forced and entrenched division, internal and inter-Nation conflict, rejected Indigenous self-determination, and prescribed and administered what Indigenous models of government could and should be. The BC government, until very recently, has tended to view supporting the work of Nation and government rebuilding as a role for the federal government alone to engage in, and as a challenge with few good solutions.

Interlaced with this mindset has been a longstanding paternalism, typified by language the BC government pursued in agreements. For example, in “revenue-sharing” agreements where a Nation receives a portion of tax or other revenue tied to the use of a natural resource (e.g., “royalties” for minerals or forests) as a legally required “accommodation” of the economic component of their Title and Rights, the BC government has often tried to demand that the income be spent by Nations in a certain way. These demands have proved to be divisive and a source of conflict, as well as unprincipled and offensive—in effect, they are an attempt to continue to maintain control and administration over Indigenous peoples. They are in conflict with self-determination itself, and with Nations and governments rebuilding themselves by setting their own priorities through

**The Attorney General of British Columbia must take positive and constructive steps in this direction by establishing new guidance for Crown lawyers on the conduct of potential litigation with Indigenous peoples.**



**Where Nations bring forward their visions and priorities as governments, the BC government should be prepared to directly invest in support of that work being implemented.**



their own processes and without government support being dictated by or tied to acceptance of particular resource development projects as a quid pro quo.

Advancing Indigenous Nation and government rebuilding consistent with Indigenous self-determination requires a different strategy. The BC government—irrespective of what the federal government may be doing (though currently the possibility for aligned efforts should be strong)—should recognize that supporting this work is fundamental to achieving relations with Indigenous peoples based on recognition and respect, and that it is consistent with the *UN Declaration*. To this end, where Nations bring forward their visions and priorities as governments, the BC government should be prepared to directly invest in support of that work being implemented, apart and independent from achieving agreements on other outcomes (such as natural resource development) and without demanding a prescribed Crown role in the rebuilding effort. Consideration may also be given to having Indigenous-led and -controlled entities and/or processes which could be the intermediary for supporting this rebuilding work, as opposed to the Crown playing any direct role other than providing financial support. In some respects, aspects of this model have already been contemplated in the Commitment Document (Appendix B), which includes a goal to establish an Indigenous commission “designed, established and driven by First Nations, to provide certain supports to First Nations, respectful and reflective of, and consistent with, First Nations’ rights of self-government and self-determination. The commission would provide a range of processes and options that First Nations may opt-in to use, from non-binding to binding outcomes.”

Currently there are legislative disincentives to Nations engaging in the work of Nation and government re-building because in BC there is no legislative mechanism for the BC government to recognize an Indigenous government as a public legal body, other than a Band Council imposed under the Indian Act. Tribal Councils can only gain legal status as societies under the Societies Act. The effect is that even where a Nation is doing the work (or has done, as many have) of rebuilding their governing structures, the government is limited or even unable to properly engage and work with those entities as governments, and legislation prevents those Indigenous governments from utilizing the provincial law in basic ways they need to (such as in relation to holding lands, structuring financial relationships, etc.). As an immediate interim step, legislative actions could be taken to ensure BC has the proper legislative space to recognize, acknowledge and form agreements with Indigenous governments. This could include provisions that establish a mechanism for the BC government to recognize the legal standing, capacity and representation of a self-determined Indigenous government (Article 27 of the *UN Declaration* calls on States to “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...”). Such a legislative amendment would be but one small part of Crown governments beginning to get their own house in order so that relationships with Indigenous peoples consistent with the minimum standards in the *UN Declaration* can be honoured.

### **Action Three: Tangible steps to turn words into action**

**Take tangible steps to turn words into action through a diverse range of implementation initiatives that reflect the minimum standards in the *UN Declaration*.**

Tangible action is crucial in moving this work forward, including advancing new models of consent-based agreements that reflect the minimum standards in the *UN Declaration* as a whole. It must be emphasized again that the *UN Declaration* cannot be read or implemented in a piecemeal or partial manner; it is intended to be implemented holistically, without discrimination. Examples

of what this could look like already exist in BC. For example, on June 27, 2018, the Province and the 'Namgis, Mamalilikulla and Kwikwasut'inuxw Haxwa'mis First Nations signed a Letter of Understanding<sup>14</sup> regarding finfish aquaculture farms in the Broughton area. The letter specifically speaks of the application of the *UN Declaration*, including Articles 19 and 32(2), and utilization of processes of consent-based decision-making.

## Province and the 'Namgis, Mamalilikulla and Kwikwasut'inuxw Haxwa'mis Nations

### Letter of Understanding, section 2.9

"While the articles of UNDRIP benefit from being read comprehensively, and without restricting the application of UNDRIP to the work under this Letter of Understanding: Article 19 of UNDRIP states that 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.' Article 32(2) of UNDRIP states that "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."

There exists legislative action the BC government could be taking to facilitate the development of approaches to consent-based decision-making.

Other examples exist in agreements such as the Political Accord on Advancing Recognition, Reconciliation, and Implementation of Title and Rights<sup>15</sup> signed with the Nlaka'pamux Nation Tribal Council (NNTC) and the long-term Foundation Agreement signed with the shísálh Nation.<sup>16</sup> A concerted effort should be made to exponentially multiply such agreements, in order to ensure holistic implementation, without discrimination. There are instances where Indigenous Nations and industry have arrangements between them that are ready to facilitate and support a process of consent-based decision-making, but Crown approaches have not been ready to pursue that objective.

At the same time, there exists legislative action the BC government could be taking to facilitate the development of approaches to consent-based decision-making. A major obstacle is that currently BC legislation, including land and resource legislation, is drafted without consideration of the exist-

14 Province of British Columbia and the 'Namgis, Mamalilikulla and Kwikwasut'inuxw Haxwa'mis First Nations, Letter of Understanding regarding a government-to-government process to address finfish aquaculture in the Broughton Area, including recommendations on Provincial Tenure Replacement Decisions, June 27, 2018, [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/lou\\_broughtonfn\\_27june2018.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/lou_broughtonfn_27june2018.pdf).

15 Province of British Columbia and the Nlaka'pamux Nation Tribal Council, Political Accord on Advancing Recognition, Reconciliation, and Implementation of Title and Rights, November 2017, [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/nntc\\_final\\_27nov2017\\_accord\\_bc.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/nntc_final_27nov2017_accord_bc.pdf).

16 Province of British Columbia and the shísálh Nation, shísálh Foundation Agreement, October 4, 2018, [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh\\_nation\\_foundation\\_agreement\\_-\\_final\\_-\\_redacted-\\_signed.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh_nation_foundation_agreement_-_final_-_redacted-_signed.pdf).

**A simple legislative amendment should be made that allows provincial decision-makers to enter into agreements and arrangements with Indigenous Nations, including about how decisions are made.**



ence of Indigenous Rights and Title. This approach is reflected in many ways, including provisions that require statutory decision-makers to act in certain ways, including when using their discretion, that preclude experimentation with possible approaches to consent-based decision-making.

For example, the way legal understandings are applied regarding the discretion of decision-makers, as well as the ways in which Rights and Title are ignored in current statutes, create a situation that, based on administrative law principles, likely inhibits many models of consent-based decision-making from being engaged. As an interim step, a simple legislative amendment should be made that allows provincial decision-makers to enter into agreements and arrangements with Indigenous Nations, including about how decisions are made, and that vacates, replaces or removes the discretion attached to those decision-makers. Such an enactment should not prescribe or require any particular approach to decision-making. As an interim step, however, it would create the legislative space for such arrangements to be pursued and be meaningful. Again, this is an example of the Crown taking steps to get its own house in order to play its part in implementing the *UN Declaration*.

#### **Action Four: Raising public awareness**

**Develop tools that entrench an understanding, respect and appreciation of the *UN Declaration* in society at large.**

There has been a lot of misinformation and lack of information surrounding the *UN Declaration*. Patterns of public and policy discourse on matters related to Indigenous Rights are changing—and consideration should be given to how to deepen this acceleration by creating tools that explain to all sectors of society—not least the public service itself—the importance of implementing the *UN Declaration* and things everyone can do to implement it. Such a broad set of human rights education initiatives will help combat prejudice and eliminate discrimination against Indigenous peoples, while also creating a more supportive context for implementation. The government of BC—particularly the ministries of education and Indigenous relations and the Attorney General—should invest resources into this public education work.

### **Practical examples of implementation being led or to be led by Indigenous peoples**

Translating the *UN Declaration* into Indigenous languages.

Incorporating the *UN Declaration* into curriculum for education at all ages.

Having workshops at gatherings to explore meaning and effects.

Using provisions from the *UN Declaration* in all relevant policy and decision-making.

Citing the *UN Declaration* in resolutions, laws and other instruments of governance

Incorporating the standards of the *UN Declaration* in diverse agreements with governments and corporation.

Using the *UN Declaration* as a key tool for Nation-building and for strengthening communities.

Ensuring legal counsel is wholly familiar with the *UN Declaration* and related international human rights law.

# Conclusion

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IMPLEMENTATION OF THE *UN DECLARATION IN BRITISH COLUMBIA*, if pursued coherently, systematically and in partnership with Indigenous peoples, is critical for the future of the province. As the framework for reconciliation, implementation of the *UN Declaration* can help move us out of generations of conflict in the courts and on the ground. Through undertaking this work, the current unsustainable approaches to land and resource decision-making and environmental protection can be fixed in a way that builds greater harmony and effectiveness into the future. Through taking the next steps in this work, such as those outlined in this report, a foundation will be set for our collective future in a rapidly changing local, national and international context.

# Appendix

## External documents

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**Appendix A: United Nations Declaration on the Rights of Indigenous Peoples:**

<https://www.policyalternatives.ca/UNDRIP-BC/Appendix-A-UNDRIP>

**Appendix B: 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>



Union of British  
Columbia Indian Chiefs



CCPA  
CANADIAN CENTRE  
for POLICY ALTERNATIVES  
BC Office

Canadian Centre for  
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