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Realising Indigenous rights in the context of extractive imperialism: Canada's shifting and fledgling progress towards the implementation of UNDRIP

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Abstract

Canada's reputation as a global champion of human rights has been tarnished by the revelation of the enduring colonial impact and social and economic disparities endured by Indigenous peoples within Canada. While Canada has a strong legal framework for Indigenous rights, its significant and enduring policy and implementation failures are increasingly recognised by both domestic and international bodies. This article addresses Canada's shifting yet fledgling progress towards the harmonisation of Canadian domestic law and the implementation of the United Nations *Declaration on the Rights of Indigenous Peoples.* The pathway to reconciliation and sustainable development for Canada is discussed as rights-based resource governance in contrast to Canada's current imposition of extractive imperialism in both Canada and Latin America.

Keywords

Indigenous rights, UNDRIP, extractivism, consent, imperialism, reconciliation

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Introduction

Canada has long been regarded as a progressive advocate for the advancement of human rights globally. Canada, instrumental in the development of the United Nations (UN) in 1945, has been recognised for its progressive legal framework for Native land settlements and was the first country to make constitutional provisions through section 35 of the 1982 Constitution Act. Canada's leadership status on Indigenous affairs is, however, quite tarnished. As opposed to being a stalwart advocate of human rights, Canada has increasingly become known as a wealthy nation that has failed to adequately address the multiple issues of Indigenous housing, education, youth suicide, and missing and murdered women, and has failed to address the persistent lifespan and community well-being gaps between Indigenous and non-Indigenous people in Canada. The contradiction between Canada's international reputation on human rights and the state's domestic and international performance on Indigenous rights will be discussed in terms of Canada's contemporary colonial expression of extractive imperialism. Colonialism has been displacing Indigenous peoples for centuries. With Canada's heavy reliance on a resource-based economy, 'contemporary extractivism reproduces the resource colonialism of old, with symbolic and material benefits continuing to flow into already empowered (and usually distant) hands and local peoples continuing to bear disproportionate environmental and social burdens' (Willow, 2016, p. 3).

A new colonial era focused on resource extraction has been referred to as extractivist imperialism by Canadian scholar Veltmeyer (2012). Extractive imperialism is defined as a global political economy of natural resource extraction that threatens Indigenous communities with economic and social destruction. Extractive industries engage in colonial forms of territorial displacement characterized by environmental degradation, denuding and polluting of Indigenous territories, and dispossessing Indigenous peoples from their territories and natural resources (Veltmeyer & Petras, 2014).

This paper arises from reflections derived from community-engaged scholarship, funded by the Canadian Social Sciences and Humanities Research Council (SHRRC), which received research ethics board approval from my university and was supported by a Chiefs Council Resolution from Matawa First Nations. Within this multi-year research project we seek to answer the research questions: 'Can Canadian and international Indigenous rights frameworks be harmonised?' And 'What are the standards and practices of cultural recognition, respect and intercultural communication that must be enacted in relationships between Indigenous communities, government and industry in order to establish meaningful and legitimate agreements around the development of natural resources?' This article provides a review of Canada's shifting standing on the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP; United Nations, 2007b), which is the context for the struggles of the Matawa First Nations to engage in the exertion of their right to Free Prior and Informed Consent.

I will outline the Canadian state's promising, though still fledgling, implementation efforts in the context of Indigenous rights and resource extractivism. I will end the article with a discussion of the challenges of the implementation and realisation of UNDRIP, based on a seemingly intractable ontological divide between Indigenous peoples and non-Indigenous peoples and the increasing pressures of contemporary colonialism in the form of extractivist imperialism.

Internationalisation of Indigenous rights

Indigenous peoples around the world are facing serious and protracted struggles to assert their most basic human rights. In 1982, UN Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities, José R. Martinez Cobo, released a study about the systemic discrimination faced by Indigenous peoples (United Nations, 1982).

In response to the 1981 report on the discrimination of Indigenous peoples, several decades of consultation and negotiation among Indigenous and state leaders resulted in the signing of the UNDRIP. The Declaration represents an important development in the recognition and internationalisation of Indigenous rights, as it provides an international rights standard for 148 member nations. Significantly, while existing international human rights treaties have been negotiated and drafted by experts, UNDRIP is the only UN instrument that was drafted with the extensive participation of the affected population.

In consultation with Indigenous representatives from around the world, the newly established UN Working Group on Indigenous Peoples (WGIP) began drafting a declaration of Indigenous rights in 1985. Developed over a period of eight years, the initial draft was submitted to the Subcommission on the Prevention of Discrimination and Protection of Minorities in 1993, and was approved the following year. Upon its approval, the draft declaration was sent to the Commission of Human Rights, which established another working group consisting of human rights experts and over 100 Indigenous organisations. The draft declaration was subjected to a series of reviews to assure UN member states that it remained consistent with established human rights practices—neither contradicting nor overriding them.

In 2007, after more than two decades of drafting, UNDRIP was formally brought before the UN General Assembly, and passed with 144 votes. The declaration sets ‘the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world’ (United Nations, 2007a, Article 43). With the adoption of the UNDRIP, signatory states formally recognised the distinct status of Indigenous peoples, as well as the international obligation to protect and promote their human rights (Stavenhagen, 2009). The adoption of UNDRIP reinforces the fundamental rights and protections of Indigenous peoples that were already recognised by international law, and the inherent rights of Indigenous peoples, often denied by states (Mitchell & Enns, 2014).

Canadian Context of UNDRIP

In the absence of an intercultural understanding of land and resources, and a lack of clear definitional and operational guidelines for the implementation of the UNDRIP (United Nations, 2007), little progress has been made to advance Indigenous territorial rights in Canada since its signing, outside of Canadian Supreme Court rulings (Mitchell, 2014). Upon concluding his visit to Canada in October 2013, James Anaya, the UN special rapporteur on the Rights of Indigenous People from 2009 to 2014, indicated that Canada offers no exception to the grave situation of Indigenous peoples’ rights and well-being globally (Anaya, 2013). Indigenous peoples in Canada, as elsewhere, have been positioned as ‘standing in the way of progress’, while being disproportionately and negatively affected by industrial processes (Blaser, Fleit, & McRae, 2004). Increasing conflict has arisen between the rights of Indigenous peoples and the far reach of global capital in the form of extractivist imperialism. Increasingly, governments and industries

seek gold, silver, uranium, iron ore, copper, chromite and other resources from Indigenous territories both domestically and abroad.

Canada is heavily dependent upon a resource-based economy while emerging as a global mining super power with considerable mining interests in Indigenous territories, both within Canada and abroad. Significantly, more than 62% of the world's mining equity was on the Toronto Stock Exchange in 2014, and 75% of the world's mining companies are headquartered in Canada (Government of Canada, 2016; Mining Association of Canada, 2017). Much of Canada's global dominance in mining is exerted in Latin America, with 70% of mining being conducted by Canadian mining companies predominantly on Indigenous territories (International Council on Mining and Minerals, 2013; Mining Watch, 2017; Working Group on Mining and Human Rights in Latin America, 2014). While Indigenous peoples occupy 24% of the world's land mass, their territories hold 80% of the world's biodiversity and a rich land base of minerals and precious metals. As reported by the World Bank, 'the demand for lands and resources and extractive practices isn't going to go away' (Sobrevila, 2008).

Indigenous peoples within Canada and worldwide share concerning measures on all indicators of health, education, social and political participation, including nutrition, employment and income, relative to settler populations (Nelson & Wilson, 2017; Paradies, 2016; Smylie & Firestone, 2016). Canada is a wealthy nation in which Indigenous communities suffer great economic disadvantage, despite the fact that they occupy vast territories with a tremendous wealth of natural resources, as do many other Indigenous nations who are considered land rich but economically poor (Adamson, 2003). When consultation and consent seeking occurs in relation to Canadian mining, it is largely in the context of great community need for basic necessities arising out of colonial impacts and gross social and economic inequality, as evidenced by the findings from the Government of Canada's Community Well Being Index (CWBI; Aboriginal Affairs and Northern Development Canada, 2015).

The CWBI is comprised of four components, each of which runs from a low of zero to a high of 100: Education, Labour, Income and Housing. The CWBI scores are used to compare the well-being across First Nation and Inuit communities with well-being of non-Indigenous communities over time (see Figure 1).

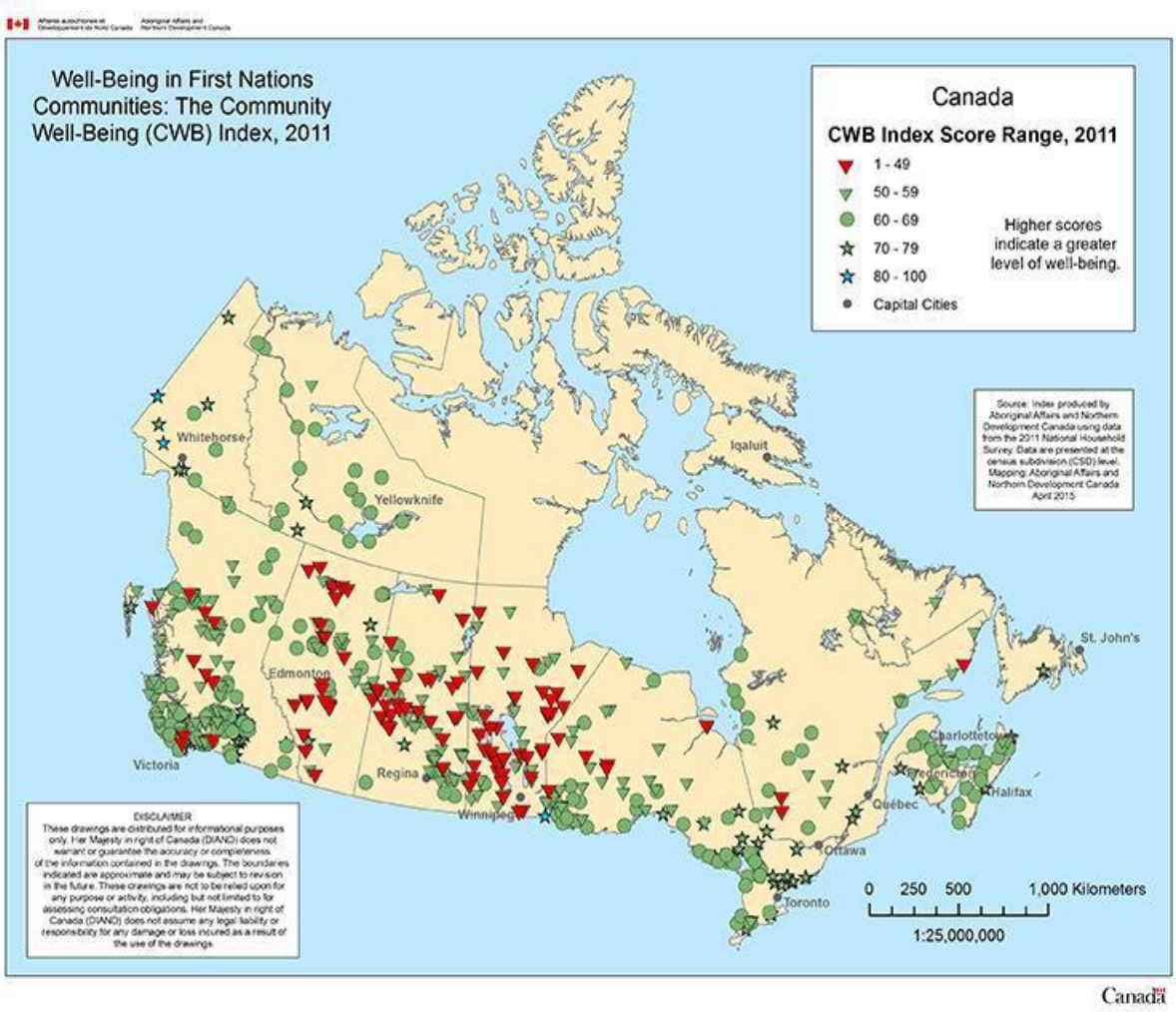

Fig 1. Map of Community Well-Being in First Nations Communities, 2011.

The scores of the CWBI in First Nations communities are significantly lower than that observed in other Canadian communities. While some First Nations communities score at or above the non-Indigenous average, 98 of the 100 lowest-scoring communities are First Nations, and only two of the 100 top-scoring communities are First Nation communities (Aboriginal Affairs and Northern Development Canada, 2015). This documented well-being gap is the social and economic context in which Indigenous land and resources are negotiated. Provincial governments and Industries, through Impact Benefit Agreements, promise Indigenous communities benefits such as increased access to education, water, housing and employment in exchange for their lands and resources. Hence, in the context of gross gaps in basic human rights, which are protected but not delivered under existing domestic human and international rights agreements, Indigenous peoples are placed in a position in which they are asked to negotiate their land and resources in the face of great need. Land negotiations in the context of gross social and economic need does not fulfill the basic requirements of Free Prior and Informed Consent (FPIC). The current processes of exploration, permitting, and mining in both Canada and Latin America are therefore being conducted in a context which cannot be viewed as free from coercion.

Canada's shifting relationship with UNDRIP

The internationalisation of Indigenous rights has been a slow, hard-won battle for rights recognition, beginning in 1923 when Deskaheh (Levi General) of the Six Nations of the Grand, Canada made a trip to Geneva, Switzerland to present the 'red man's appeal' to

the League of Nations (Deskaheh, 1924). Despite Canadian Indigenous leaders' significant role in advancing the internationalisation of Indigenous rights, the Government of Canada is not a signatory to ILO Convention 169 and refused to sign UNDRIP at its adoption in 2007. The Canadian government eventually became a signatory to UNDRIP in 2010 with qualifications, referring to the Declaration as an 'aspirational document'. In 2014, the Canadian government, under Prime Minister Harper, was the only UN member to refuse to adopt the outcome document of the Indigenous World Conference in 2014, citing objections to article 20 of the outcome document due to its explicit commitment to the implementation of FPIC.

> We recognize commitments made by States, with regard to the United Nations Declaration on the Rights of Indigenous Peoples, to 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. (United Nations, 2014a, Article 20)

Yet, in 2014, Canada's Truth and Reconciliation Commission released its final report and Calls to Action. The report advanced UNDRIP as a framework for reconciliation within Canada and called upon the Canadian government to fully adopt and **i**mplement the Declaration through a national action plan in Calls to Action 43 and 44.

> 43 We call upon 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.
> 44 We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples.
> (Truth and Reconciliation Commission of Canada, 2015, Articles 43 & 44)

In 2016, Canada announced the removal of its permanent objector status to UNDRIP in May at the United Nations Permanent Forum on Indigenous Peoples to a standing ovation. In July of the same year, however, the Minister of Justice stated that the Implementation of UNDRIP is 'unworkable in Canadian law'. Following international critiques, Prime Minister Trudeau announced in 2017 the formation of a Ministerial Working Group on the Review of Laws and Policies Related to Indigenous Peoples. In 2018, Bill C-262, a bill to harmonise Canadian law with UNDRIP, was brought forward to the House of Commons and passed all three readings. In 2019, Bill C-262, while passed in the House of Commons has still not been approved in the Senate and has therefore not become law. At this point in time, the Government of Canada maintains its long-standing position that UNDRIP is not consistent with Canadian law.

International gaze on Canadian state's performance on Indigenous rights

Canada has traditionally looked outward to address human rights violations internationally. It must now begin to look inward at domestic Indigenous affairs from a critical international Indigenous rights perspective that includes the application of UNDRIP. Persistent and unacceptable gaps exist between the individual and collective well-being of settler populations and Indigenous communities worldwide, regardless of whether they are members of minority populations, majority populations or living within third or first world countries (Cohen, 1999; United Nations, 2014b). Canada is no exception (Adelson, 2005; Anaya, 2014; Assembly of First Nations, 2018; Loppie Reading & Wien, 2009; Royal Commission on Aboriginal Peoples, 1996). These gross inequalities are confirmed by empirically based socio-economic indicators of health, education, employment, income,

and social and political participation, and have been reported by international bodies such as the United Nations. While there has been an increasing internationalisation of Indigenous rights, reflected in the ILO Convention 169 (International Labour Organization, 1989) and the UNDRIP, as well as other conventions and treaties, Indigenous peoples are still being blocked from enjoying their rights to self-determination and self-determined development. Despite a succession of Canadian Supreme Court rulings in favour of Indigenous land rights, Indigenous peoples in Canada are still having to enter the Canadian legal system in order to assert and defend their Indigenous laws and inherent jurisdiction over their traditional territories.

Despite a strong legal framework, there is a crisis in the area of Indigenous rights within Canada, with many Indigenous people in Canada living in conditions that approximate those of people living in the most economically disadvantaged and underdeveloped countries in the world (Anaya, 2014). Anaya (2014) highlighted the unacceptable disadvantages in living standards, education, health and employment, stating 'it simply cannot be acceptable that these conditions persist in the midst of a country with such great wealth' (p. 1). Anaya also identified the distrust between Indigenous peoples and governments, the growing challenges of resource governance on Indigenous territories, and the lack of appropriate consultation with Indigenous communities in advance of development despite existing legal provisions, constitutional requirements and the responsibilities as a signatory to UNDRIP.

Canada is under increasing international scrutiny by the United Nations and international advocacy groups (Amnesty International, 2013, 2018; Anaya 2014; United Nations Committee on the Elimination of Racial Discrimination, 2017). This increasing international attention is concurrent with the rising tensions between First Nation communities, industry, and federal, provincial and territorial governments in relation to the extraction of non-renewable resources and the contentious pipeline routes over Indigenous territories.

The 2017 report of the United Nations Committee to Eliminate Racial Discrimination (CERD) indicated that the Committee was 'deeply concerned' by Canada's continuous violations of the land rights of Indigenous Peoples,

> in particular environmentally destructive decisions for resource development which affect their lives and territories continue to be undertaken without the free, prior and informed consent of the Indigenous peoples, resulting in breaches of treaty obligations and international human rights law. (United Nations Committee on the Elimination of Racial Discrimination, 2017, Article 19a, p. 5)

The report also raised concerns that Canada's UNDRIP Action Plan has not yet been adopted. The international gaze brings a number of critical questions into focus in relation to Canada's implementation of UNDRIP and the right to FPIC in both Canada and Latin America.

Canada's UNDRIP Implementation Failure in both Canada and Latin America

The emergence of an international Indigenous rights regime has increased international scrutiny on Canada's performance on Indigenous rights. During an unprecedented period of the internationalisation of Indigenous rights between 2007 and 2018, Canada has been falling behind, both domestically and internationally; in particular, in relation to the nation's global dominance in the mining sector. For over a decade, Canada, across two federal governments, has continued to assert the position that UNDRIP is an aspirational and non-binding document inconsistent with Canadian law. Despite the existence of a strong social

and legal environment, and in part because of these strengths, Canada is challenged to improve its international rights standards both locally and abroad, in alignment with UNDRIP, with both Canadian supreme court and provincial court rulings confirming a lack of adequate consultation (Ontario Supreme Court, 2018; Supreme Court of Canada, 2014). Understanding the implementation of FPIC in Canada involves complex legal, ethical, and economic considerations, as well as an awareness of the ways FPIC is applied across different jurisdictions. Jurisdiction is particularly important when it comes to natural resource development and management because, although the federal government has constitutional responsibility for 'Indians and Lands reserved for the Indians' (s. 91(24) Constitution Act, 1982), the provinces have constitutional authority over natural resources within their boundaries (s. 92A, Constitution Act, 1982).

We have observed a failure to implement UNDRIP in two Indigenous territories my research group has worked with over the last four years in Canada and Chile. We have witnessed parallel processes and outcomes of a failure to consult. In Canada, Matawa First Nations has resisted ongoing pressures for development in a less than optimal environment of consultation. In discussions with members of the nine Matawa communities in a research workshop on FPIC, we learned from their experience over the last 10 years of negotiations around the chromite rich deposits called the Ring of Fire that they did not experience FPIC. One individual summarised it like this:

> From a First Nation's perspective, it's not free. It's imposed on us; you're manipulated. You're everything, the definitions of free means, in terms of FPIC, that particular clause has every parameter of that definition—force, intimidation, inducement, manipulation—it's all there. How [do] you deal with it … I think you pretty much have to stand up, but you stand up collectively and have to do it in unison. (Participant quote)

Some communities have had to assert their right to self-determined development. One example of this is Neskantaga First Nation's refusal to adhere to the controversial Far North Act of 2010, provincial legislation that regulates land-use planning and protected areas, choosing to establish their own community protocols. Another example is Eabametoong First Nation, which successfully halted an exploration permit issued to Landore Resources mining company that would allow drilling on their traditional territory (Barrera, 2018). The decision of the Ontario Superior Court of Justice Divisional Court determined that the Ministry of Northern Development and Mines did not meet their constitutional duty to consult when issuing a permit to the mining company, citing the community's unfulfilled expectations of further engagement and desire to develop a Memorandum of Understanding in advance of exploration (Isaac & Hoekstra, 2018). Communities have had to defy provincial legislation and/or take the province to court to assert their rights, confirming the individual quote regarding the experience of FPIC as being one in which communities have not felt free to decide but rather have felt imposed upon and manipulated.

Our research in Latin America has centred around two large mining projects in Chile, Pascua Lama and El Morro, owned by Canadian transnational corporations. One of the most affected areas is home to the Andean peoples in northern Chile along the border of Peru and Bolivia. Through Observatorio Ciudadano (Citizen's Watch), a Human Rights Impact Assessment was performed with the Diaguita peoples and Canadian mining projects operated by Barrack Gold, Gold Corp., and more recently, Tek Resources (Observatorio Ciudadano, 2016). The largest mine, Pascua Lama, operated by Barrick Gold, has been halted on the basis of lack of compliance to the environmental impact assessment. The second project in El Morro, with Gold Corp and Tek Resources, was halted on two occasions due to the lack of consultation. The same pattern has been

repeated in the context of the Colla territory where there are three mines in operation that did not involve consultation or FPIC of the community.

In Chile, the Diaguita peoples have engaged in various strategies of resistance. They have reported that they need to challenge global investments and that it is difficult to do this at a local level. They took their case, therefore, to the Inter-American Human Rights system as well as the UN Human Rights system. They are struggling to assert their cultural and territorial rights in the face of a Canadian mining company that has had their gold mining operations in Pascua Lama in Atacama Chile suspended by the Chilean state since 2007 for non-compliance with environmental standards (Aylwin, Gomez, & Vittor, 2016; Global News, 2007).

Discussion

Promising implementation efforts

Canada has demonstrated a contrary and shifting relationship to UNDRIP, with demonstrated failures to respect FPIC both within Canada and Latin America. There is a clear and demonstrable contradiction between the goodwill statements that have been made by the Prime Minister of Canada and high-level ministers regarding Canada's commitment to UNDRIP and the government's federal and provincial actions in advancing multiple developments, both domestically and internationally, without appropriate consultation. Despite these gross failures in the advancement and implementation, there has been some guarded optimism, along with considerable critique, of the Trudeau government's engagement with UNDRIP. Four main government initiatives demonstrate fledgling advancement towards the harmonisation of Canadian law and UNDRIP and should be considered for their potential to advance Indigenous rights.

First, there were the extensive processes of the Truth and Reconciliation Commission (TRC) and its final report, and 94 Calls to Action that were made public in 2015. The TRC report advances UNDRIP as a framework for reconciliation in Canada and calls for an action plan to ensure the full implementation of the Declaration.

Second, the Prime Minister, under international scrutiny of Indigenous rights violations in Canada, formed a ministerial working group to review Canadian law and its impact on Indigenous peoples. The Working Group of Ministers was tasked with reviewing Canadian law to examine relevant federal laws, policies, and operational practices to help ensure that the government is meeting its constitutional obligations with respect to Aboriginal and treaty rights and adherence to international human rights standards, including UNDRIP. The Prime Minister of Canada, Justin Trudeau announced:

> Today, we are meeting the commitment we made to First Nations, Inuit and Métis, and to all Canadians to review the laws and policies that relate to Indigenous Peoples. The Working Group of Ministers – in partnership with Indigenous leaders and a broad range of stakeholders, including youth – will assess and recommend what statutory changes and new policies are needed to best meet our constitutional obligations and international commitments to Indigenous Peoples. Through this initiative and the other steps we have recently taken, we are working on a complete renewal of Canada's nation-to-nation relationship with Indigenous Peoples. (Government of Canada, 2017)

Third, the Prime Minister announced the development of the office of the Canadian Ombudsperson for Responsible Enterprise (CORE), which will have the power to oversee and review complaints regarding extraterritorial obligations and violations of Canadian

companies. The creation of an Ombudsperson and a multi-stakeholder Advisory Body will assist Canada in fulfilling its international human rights obligations through responsible business and access to remedy for alleged extraterritorial human rights abuses arising from Canadian industries. CORE is reportedly founded on a commitment to advance human rights and assist Canada in fulfilling its international human rights obligations. In this context, they will support Canadian companies in operating responsibly, and improve access to remedy for alleged human rights abuses arising from Canadian company operations abroad (Global Affairs Canada, 2018).

Fourth, a private member's bill, C-262, was advanced by an Indigenous Member of Parliament, Romeo Saganash, which calls for the harmonisation of Canadian law with UNDRIP. The bill has passed its third reading in the House of Commons and is now being reviewed by the Senate (Government of Canada, 2018). If the Senate approves Bill C-262, the rights to self-determination and to FPIC will have official legal and governmental standing in Canada.

These fledgling innovations in Indigenous law and the harmonisation of domestic and international Indigenous rights frameworks within Canadian law have the capacity to advance the implementation of UNDRIP through the monitoring of the Canadian extractive sector's compliance with UNDRIP in both Canada and Latin America.

A central argument, however, can be put forth for why the Canadian state is so consistently inconsistent in its application of principles, values and actions in relation to Indigenous land and resources, and its ongoing failure to implement UNDRIP despite the state's progressive legal context and four government initiatives as outlined above. The contradictory nature of Canada's relationship to UNDRIP can in large part be explained by Canada's engagement in, and commitment to, extractivist imperialism both with Canada and extraterritorially. Canadian mining and forest activities on Indigenous territories in Canada and Chile are contemporary forms of colonialism that impose ongoing incursions on Indigenous territories. Canadian extractive industries in Canada and Chile have not only failed to provide social and economic benefits to Indigenous communities but have had major negative socioeconomic and environmental costs, causing cultural disruption and political conflict.

Extractivist imperialism undermines the very existence and reality of Indigenous law through the dominating forces of colonial state law and business practices. Indigenous laws, customs and ceremonies that predated contact and those that have evolved since contact are central to Indigenous cultures and relevant to the just administration of state policy and law (Borrows, 2002). With the imposition of extractivist imperialism, respect for and protection of cultural lifeways are violated through consistent failure to appropriately consult with Indigenous leadership and to respect Indigenous community norms and Indigenous visions of self-determined development. Extractivist imperialism commits the violence of gross interference on Indigenous territories and of Indigenous lifeways by viewing water, minerals, land and trees through the lens of market value rather than the lens of relationship and stewardship (Klein, 2013). Extractive imperialism is founded upon a profound yet seemingly silent and intractable ontological divide.

Extractive imperialism is exercised with consistent disregard of Indigenous values, views, and laws and functions, as if free from international and domestic rights frameworks. As long as Indigenous peoples, their worldviews, laws and cultural practices are not recognised and valued, this ontological divide, reinforced by an increasing trend towards global economic treaties and a failure of governments and industries to respect and

protect Indigenous rights to self-determination, the implementation of UNDRIP in Canada and Latin America will not be realised.

Canada has an opportunity to work in concert with Indigenous leaders and various levels of government and industry to advance the full implementation of UNDRIP. In doing so, Canada may once again earn a legitimate voice at the international table on issues of human rights and Indigenous issues through the promotion of Indigenous leadership and intercultural dialogue on the internationalisation and realisation of Indigenous rights and the implementation of FPIC. The harmonisation of Canadian domestic law and UNDRIP would serve to recognise Indigenous self-determination and advance productive, mutually beneficial business partnerships. The development of a Canadian ombudsperson to monitor and address human rights violations in Canadian mining is a critical step for the advancement of Canadian mining practices that are governed by Indigenous rights of self-determination and the right to FPIC as advanced by UNDRIP in alignment with other existing international Indigenous and human rights instruments. The harmonisation of Canadian law with UNDRIP and the development of a monitoring body for Canada's extraterritorial business interests are two promising approaches to the domestic and international implementation of UNDRIP that will begin to address the problems of coercion within Canada and Latin American.

Conclusion

Canada's conflicting relationship regarding the implementation of UNDRIP, as discussed in this article, points to several troubling ironies and unrealised opportunities, as highlighted by the 2018 UN report on the crisis of Indigenous issues in Canada. Although Canada has many positive accomplishments in the area of Indigenous law, Canada's view on FPIC is falling behind that of the international community. Appropriate mechanisms for authentic and respectful processes of consultation and FPIC, accompanied by environmental protection and Indigenous benefit and wealth sharing, need to be co-developed. At this time of the internationalisation of Indigenous rights, there is a political opportunity for Canada in contributing to the full implementation of UNDRIP, in particular with the current consideration of Bill C-262 by the Canadian government. However, implementation of UNDRIP must be premised and contingent upon the full recognition and respect of Indigenous ontologies and Indigenous laws. Full implementation of UNDRIP will be contingent upon Indigenous peoples' FPIC. Canada must address the well-being gap between Indigenous peoples and other citizens in Canada as a prerequisite to consultation seeking regarding Indigenous lands and resources. Rights-based resource development versus extractive imperialism would be consistent with Indigenous people's cultural frameworks and worldviews in making significant long-term decisions, free from coercion about their lands and territories. Rights-based resource development, based on good governance, is an essential pathway to reconciliation and sustainable development for Canada. Land stewardship and business agreements developed in keeping with UNDRIP must occur in a social, economic and political context free from coercion.

References

Aboriginal Affairs and Northern Development Canada. (2015). *The Community Well-Being Index: Well-Being in First Nations Communities, 1981–2011.* Ottawa, Canada: Her Majesty the Queen in Right of Canada, represented by the Minister of Aboriginal Affairs and Northern Development.

Adamson R. (2003). Land rich and dirt poor—The story of Indian assets. *Native Americans,* Summer, 26–37.

Adelson, N. (2005). The embodiment of inequality: Health disparities in Aboriginal Canada. Canadian Journal of Public Health, *96*, S45–S61.

Aylwin, J., Gomez. E., & Vittor, L. (2016). *El TPP y los derechos de pueblos indígenas en América Latina.* Copenhagen: IWGIA- Observatorio Ciudadano.

Amnesty International. (2013). *An update to Amnesty International's Human Rights Agenda for Canada: Time for consistent action.* Retrieved from www.amnesty.ca/sites/default/files/canadahrareport18december13.pdf.

Amnesty International. (2018). *Amnesty International Report 2017/18 – Canada*. Retrieved November 24, 2018 from https://www.refworld.org/docid/5a99392f3.html

Anaya, J. (2013). Statement upon conclusion of the visit to Canada. Retrieved from http://unsr.jamesanaya.org/ statements/statement-upon-conclusion-of-the-visit-to-canada.

Anaya, J. (2014). *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, on the situation of Indigenous peoples in Canada*. Human Rights Council. A/HRC/27/52/Add.2.) Retrieved from http://unsr.jamesanaya.org/country-reports/the-situation-of-indigenous-peoples-in-canada

Assembly of First Nations. (2018, July 11). Assembly of First Nations delivers strong statement to UN on requirement of free, prior and informed consent Canada. *NewsWire.*

Blaser, M., Fleit, H. A., & McRae, G. (2004). *In the way of development: Indigenous peoples, life projects, and development.* London: Zed Books in collaboration with IDRC.

Borrows, J. (2002). *Recovering of Canada: Resurgence of Indigenous law.* Toronto: University of Toronto Press.

Barrera, J. (2018, July 17). Ontario court quashes gold mining permit over lack of meaningful consultation with First Nation. *CBC News.* Retrieved from https://www.cbc.ca/news/indigenous/eabametoong-ring-of-fire-landore-permit-1.4750681.

Cohen, A. (1999). *The mental health of Indigenous peoples: An international overview.*. Geneva: Department of Mental Health, World Health Organization. Retrieved from http://whqlibdoc.who.int/hq/1999/WHO_MNH_NAM_99.1.pdf

Constitution Act (1982). Government of Canada. Retrieved from http://laws-lois.justice.gc.ca/eng/const/page-16.html#h-52.

Deskaheh, L. G. (1924). The Red Man's Appeal for Justice. Brantford: D. Wilson Moore Ltd. Far North Act (2010). S.O. 2010, c. 18. Retrieved from https://www.ontario.ca/laws/statute/10f18?search=far+north+act.

Global Affairs Canada (2018). Canadian Ombudsperson for Responsible Enterprise (CORE). Retrieved from https://www.canada.ca/en/globalaffairs/news/2018/01/the_government_ofcanadabringsleadershiptoresponsiblebusinesscond.html

Global News. (2007). Chilean court suspends Barrick Gold Corporations mine due to environmental irregularities. Retrieved from https://globalnews.ca/news/469330/chilean-court-suspends-barrick-gold-corp-mine-due-to-environmental-irregularities/.

Government of Canada. (2016). *Exploration and mining in Canada: An investor's brief.* Canada: Author. Retrieved from https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/poli-poli/pdf/Investment_Brief_e.pdf

Government of Canada. (2017) Prime Minister announces Working Group of Ministers on the Review of Laws and Policies related to Indigenous Peoples, Government of Canada, Prime Minister's Office, February 22, 2017. Retrieved from https://pm.gc.ca/eng/news/2017/02/22/prime-minister-announces-working-group-ministers-review-laws-and-policies-related

Government of Canada. (2018). 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. Retrieved from https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=8160636&Language=E

International Council on Mining and Metals. (2013). *Indigenous peoples and mining: Position statement.* May. Retrieved from www.icmm.com/document/5433

International Labour Organization. (1989). *Indigenous and Tribal Peoples Convention, 1989* (no. 169). Retrieved from www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C169

Isaac, T., & Hoekstra, A. J. A. (2018). Proponents and government compromise consultation under Ontario's Mining Act in Eabametoong First Nation v Minister of Northern Development and Mines. Cassel Brock Lawyers. Retrieved from https://www.casselsbrock.com/CBNewsletter/Proponents_and_Government_Compromise_Consultation_Under_Ontario_s_i_Mining_Act_i_in_i_Eabametoong_First_Nation_v_Minister_of_Northern_Development_and_Mines_i_

Klein, N. (2013). Dancing the world into being: A conversation with Idle No More's Leanne Simpson.*Yes! Magazine*. Retrieved from https://www.yesmagazine.org/peace-justice/dancing-the-world-into-being-a-conversation-with-idle-no-more-leanne-simpson.

Loppie Reading, C., & Wien, F. (2009). *Health inequities and social determinants of Aboriginal people's health.* Prince George, BC: National Collaborating Centre for Aboriginal Health.

Mitchell, T. (Ed.). (2014). *The internationalization of Indigenous rights: Considering the development, adoption and implementation of UNDRIP in the Canadian context* (Special report). Waterloo, Canada: Centre for International Governance Innovation (CIGI).

Mitchell, T. and Enns, C. (2014). *The UN Declaration on the Rights of Indigenous Peoples: Monitoring and realizing Indigenous Rights in Canada* (CIGI policy brief). Waterloo, Canada: CIGI. Retrieved from http://www.cigionline.org/publications/un-declaration-rights-of-indigenous-peoples-monitoring-and-realizing-indigenous-rights-

Mining Association of Canada. (2017). Facts and figures 2017. Retrieved from http://mining.ca/print/69

Mining Watch. (2017). *Report to the U.N. Committee on the Elimination of Racial Discrimination.* Retrieved from https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ICO_CAN_27943_E.pdf

Nelson, S. E., & Wilson, K. (2017). The mental health of Indigenous peoples in Canada: A critical review of research. *Social Science and Medicine, 176*, 93–112.

Observatorio Ciudadano. (2016). *Los impactos de las empresas en los Derechos Humanos del pueblo Mapuche en Chile*. Retrieved from https://observatorio.cl/category/publicaciones/

Ontario Supreme Court (2018). *Eabametoong First Nation v Minister of Northern Development*, 2018, ONSC 4316.

Paradies, Y. (2016). Colonisation, racism and indigenous health. *Journal of Population Research, 33*, 83–96

Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples. Indian and Northern Affairs Canada*. Retrieved from www.collectionscanada.gc.ca/ web archives/20071115053257/.

Smylie, J., & Firestone, M. (2016). The health of Indigenous peoples. In D. Raphael (Ed)., *Social determinants of health: Canadian perspectives* (3rd ed., pp. 434–469). Toronto, Canada: Canadian Scholars' Press.

Sobrevila, C. (2008). *The role of Indigenous peoples in biodiversity conservation: The natural but often forgotten partners.* Washington, DC: World Bank.

Stavenhagen, R. (2009). Making the Declaration work. In C. Charters & R. Stavenhagen (Eds.), *Making the Declaration work: The United Nations Declaration on the Rights of Indigenous Peoples* (pp. 352–371). Somerset, NJ: Transaction Publishers.

Supreme Court of Canada (2014). *Tsilhqot'in v. British Columbia*. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do

Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to action.* Retrieved from http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

United Nations. (1982). Study of the Problem of Discrimination Against Indigenous Populations: Final report submitted by the Special Rapporteur, Mr. José Martinez Cobo. E/CN.4/ Sub.2/1982/2 ECOSOC. Retrieved from https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html

United Nations. (2007a). *United Nations Declaration on the Rights of Indigenous Peoples: Resolution adopted by the General Assembly* (A/RES/61/295). Retrieved from www.refworld.org/docid/471355a82.html

United Nations. (2007b). *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Retrieved from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

United Nations. (2014a). *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples* (A/RES/69/2).

United Nations Economic and Social Council. (2014b). *Report on the Thirteenth Session. UN Permanent Forum on Indigenous Issues* (E/2014/43-E/C/19/2014). Retrieved from http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/423/63/PDF/N1442363.pdf?OpenElement

United Nations Committee on the Elimination of Racial Discrimination. (2017). Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada. Retrieved from http://undocs.org/CERD/C/CAN/CO/21-23

Veltmeyer, H. (2012). The natural resource dynamics of postneoliberalism in Latin America: New developmentalism or extractivist imperialism? *Studies in Political Economy, 90*, 57–85.

Veltmeyer, H. & Petras, J. (2014). *The new extractivism: A post-neoliberal development model or imperialism of the twenty-first century?* London: Zed Books.

Willow, A. (2016). Indigenous ExtrACTIVISM in Boreal Canada: Colonial legacies, contemporary struggles and sovereign futures. *Humanities, 5,* 1–15. doi:10.3390/h5030055

Working Group on Mining and Human Rights in Latin America. (2014). *The impact of Canadian Mining in Latin America and Canada's Responsibility. Report to the Inter-American Commission on Human Rights (IACHR).* Retrieved from http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf