

An International Human Rights- Based Approach to the Regional Assessment in the Ring of Fire

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International Human Rights Program (IHRP), Henry N. R.
Jackman Faculty of Law, University of Toronto

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Who are we?




The International Human Rights Program (**IHRP**) at the University of Toronto Henry N. R. Jackman Faculty of Law serves as a centre for international human rights work, through which experienced lawyers, faculty, and law students engage in meaningful social change.

Agenda

1. IHRP, ABPA & the Project
2. An International Human Rights Approach:
UNDRIP
3. Canada's Approach & Current Gaps
4. Potential Next Steps: RAWG / IHRP Project



Our Project

- Study how proposed mining and development projects in the Ring of Fire could affect Indigenous people's human rights.
 - Look at whether Canada is actually meeting its international human rights commitments in this region, and identify any gaps between what it promises and what is happening in reality.
 - Study how companies and governments are communicating and consulting with First Nations communities about these projects.
 - **Partner:** the IHRP is working with the Anishnawbe Business Professional Association (ABPA)
 - **Goal:** Create a report that ABPA and First Nations can use to raise awareness about the possible human rights impacts of these developments, and to encourage governments and mining companies to take action.
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Collaboration with IPC and ABPA

- The IHRP is working with the Investor Protection Clinic (IPC) at the University of Toronto Henry N.R. Jackman Faculty of Law to research companies that are active or exploring in the Ring of Fire. They are creating profiles of these companies to see where they may be falling short on sustainability and responsibility.
- Using this research, ABPA advocates to regulators (like the OSC, CSA, and CSSB) to require companies to clearly and consistently report on how their activities affect Indigenous rights. This includes treating Indigenous rights and Free, Prior, and Informed Consent (FPIC) as important financial risks.
- ABPA is also pushing for independent checks on what companies report, to prevent misleading claims about respecting Indigenous rights (sometimes called “redwashing”).






Regulator and Standards Setters

Canadian Sustainability Standards Board (CSSB)

- This group creates Canada's sustainability reporting rules for companies. These rules will require mining companies to be more open about how their projects affect the environment and communities, including whether they respect Indigenous rights and obtain Free, Prior, and Informed Consent (FPIC) on Indigenous lands.

Ontario Securities Commission (OSC)

- This is the main regulator of financial markets in Ontario. It can require companies to disclose important financial risks to investors. In the Ring of Fire context, this means it can force companies to report risks related to not properly consulting or getting consent from Indigenous communities, and take action against misleading claims about respecting those rights (redwashing).
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Regulator and Standards Setters - Cont'd

Canadian Securities Administrators (CSA)

- This is the national group that brings together all of Canada's provincial and territorial securities regulators.

Ring of Fire Implications


- By aligning rules across the country, the CSA can make Indigenous relations a national issue. This would require any company raising money for projects in the Ring of Fire to consistently report how they are engaging with Indigenous communities.
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International Law: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP is a document created by the United Nations that sets out important standards for how Indigenous peoples should be treated and respected around the world. It is “soft law,” which means it’s not legally binding, but it still carries strong moral and political weight. It outlines the **minimum standards** needed for Indigenous peoples to live well, maintain their dignity, and continue their cultures and ways of life.

The rights in UNDRIP can be grouped into four main types:

- **Civil and political rights** – such as the right to participate in government and make decisions that affect them
 - **Economic, social, and cultural rights** – such as access to education, health care, and protection of cultural traditions
 - **Land rights** – rights to own, use, and control their traditional lands and resources
 - **Process rights** – rights to be properly consulted and to give or refuse consent (called *free, prior, and informed consent*, or FPIC) before decisions are made that affect them
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Civil and Political Rights

- Include rights such as freedom from discrimination (Article 2) and the right to life, liberty, security of the person, and physical/mental integrity (Article 7)
- Importantly, includes rights with respect to self-determination and self-governance:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions


Civil and Political Rights - Cont'd

- The right to self-determination and self-government includes participation in decision-making:

Article 18: 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.



Economic, Social, and Cultural Rights

- Includes, among other things, rights such as:
 - the right to belong to an Indigenous community in accordance with traditions and customs (Article 9);
 - the right to practice and revitalize cultural traditions and customs (Article 11), practice, develop, manifest, and teach spiritual traditions (Article 12), and transmit knowledge to future generations (Article 13); and
 - rights with respect to subsistence, development, housing, education, employment, science, and health (including traditional medicine) (Articles 13, 17, 20, 21, 23, 24, 31)
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Economic, Social, and Cultural Rights - Cont'd

- An important element of these rights is prevention of forced assimilation:

Article 8:


1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;



Land Rights

- UNDRIP recognizes that Indigenous peoples have a **deep connection to their lands and territories**, and that this connection should be respected.
- It sets out standards for:
 - **Using, controlling, and developing land** (Article 26)
 - **Resolving land disputes and providing fair remedies** when land has been taken or harmed (Articles 27 and 28)
 - **Protecting and conserving the environment** on their lands (Article 29)


Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.





Land Rights - Cont'd


Article 26:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
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Land Rights - Cont'd

Article 32:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
 2. 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.
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Consultation and Free, Prior and Informed Consent (FPIC)


- Governments have a **responsibility to consult Indigenous peoples** to get their **free, prior, and informed consent (FPIC)** before making decisions that affect them.
 - This applies in many situations, including when governments:
 - **Plan to move Indigenous communities**
 - **Create new laws or policies**
 - **Make decisions that could affect Indigenous lands, cultures, or ways of life**
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Consultation and Free, Prior and Informed Consent (FPIC) – Cont'd

Displacement/Relocation:

Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.






Consultation and Free, Prior and Informed Consent (FPIC) – Cont'd

Legislative and Administrative Measures:

Article 19: 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.






Consultation and Free, Prior and Informed Consent (FPIC) – Cont'd

Compensation or remedies when Indigenous property taken:

Article 11: 2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.






Consultation and Free, Prior and Informed Consent (FPIC) – Cont'd

Hazardous waste on Indigenous Lands and Territories:

Article 29: States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.






Consultation and Free, Prior and Informed Consent (FPIC) – Cont'd

Resource development and Indigenous Lands and Territories:

Article 32: 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.





What is FPIC under UNDRIP?

Free


The right to enter into conversations and negotiations without coercion or manipulation

Prior

The right to be involved well before any decision is made about lands, resources, or people

Informed


The right to have full information that is easily accessible and readily available





How is FPIC Interpreted under International Law?

The role of consent in extractive activities:

- **The general rule: consent is required for extractive projects within Indigenous territories**
 - Extractive projects, like mining, generally should not go ahead on Indigenous lands unless Indigenous peoples have given their free, prior and informed consent. This applies not just to lands officially recognized by the government as reserved for Indigenous peoples, but also to lands they traditionally use, as well as areas that are culturally or spiritually important to Indigenous peoples (James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples).
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How is FPIC Interpreted under International Law? – Cont'd


What “consent” means in FPIC:

- FPIC helps protect Indigenous peoples’ **right to make their own decisions** (self-determination).
- Consent isn’t just about saying yes freely and with full information—it also has to be **fair and respectful of Indigenous rights**.

It includes the right to:

- **Say “no”**, or
- **Say “yes, but only under certain conditions”**

The goal of FPIC is **not always to get a “yes.”** It shouldn’t be used just to justify projects or business activities. Instead, FPIC is about **Indigenous peoples being equal decision-makers**, with a real say over what happens on their lands and territories. Consent should be a **clear and genuine agreement**, not something assumed or pressured.






How is FPIC Interpreted under International Law? – Cont'd

Consent vs. veto: what's the difference?

Indigenous peoples have the right to **say yes or no** to projects or decisions that affect them. But the idea of **consent** is about **making decisions together**, not just reacting to what governments propose.

The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) - an expert body of the United Nations - has said that focusing on questions about whether Indigenous peoples have a “veto” can **distract from and weaken the idea of FPIC**.






How is FPIC Interpreted under International Law? – Cont'd

Talking about a “veto” can make it seem like:

- Governments are the **main decision-makers**, and
- Indigenous peoples are just an **outside check** on those decisions

That's **not the goal** of FPIC.

Instead, FPIC is meant to ensure that Indigenous peoples are **involved from the very beginning**, helping **shape both the process and the outcome**. In this approach, a decision **isn't legitimate unless Indigenous peoples agree to it**—thus a mining project should not move forward without that agreement.






How is FPIC Interpreted under International Law? – Cont'd


FPIC and other rights under UNDRIP are not absolute:

Article 46 (Limitations Clause): 2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.






How is FPIC Interpreted under International Law? – Cont'd

- The limitations clause under UNDRIP is narrow. According to EMRIP, any limitation on FPIC must be "**necessary and proportionate** for the purpose of achieving the human rights objectives of the society as a whole and be non-discriminatory.”
 - This means that governments can only limit FPIC in rare cases in order to protect broader human rights.
 - It is not valid to limit FPIC merely for the purposes of supporting business interests, such as making profit (Anaya).
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How is FPIC Interpreted under International Law? – Cont'd

- Consent may not be required if it can clearly be shown that a project will not meaningfully affect Indigenous peoples' rights to their lands, resources, or way of life.
 - Consent may also not be required if any impact on those rights is very limited and falls within strict rules allowed under international human rights law (e.g. certain rights, such as freedom of expression, religion, and property rights can be limited by the government).
 - But: any limit must be truly necessary, carefully balanced, and for a valid public purpose—and not for things like profit or commercial gain.
 - In practice, this is a very high bar, and it is especially difficult to justify in the context of extractive projects on Indigenous lands.
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What does UNDRIP mean for the Ring of Fire?

- Indigenous peoples have the right to be involved in decisions that impact them, according to UNDRIP. If a project affects their lands, territories, or resources, they must be consulted and provide free, prior, and informed consent before the project is approved.
 - Consultation should include:
 - Making sure there is a fair balance of power
 - Giving Indigenous communities full and clear information, including possible impacts on people, the environment, and whether the project is realistic and worthwhile
 - Getting them involved early and continuing to involve them at every stage of the project, from exploration to closure
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What does UNDRIP mean for the Ring of Fire? – Cont'd

- When Indigenous communities consent to a project, partnerships between the government and Indigenous peoples should:
 - Protect the rights of Indigenous peoples and the environment by reducing harm to their health, land, culture, and important sites
 - Let communities stay involved in the project, such as by monitoring it and planning for what happens when it ends
 - Share the benefits, such as by giving communities a fair share of profits, ownership, and a say in decisions
 - Provide fair ways to raise concerns by creating complaint systems that respect Indigenous laws and ways of resolving disputes

(Anaya)




Canada's Approach

Canada has implemented UNDRIP domestically by passing legislation called the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA).

Section 5 of UNDRIPA: The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.


“...the UNDRIP was incorporated into Canada’s positive legal framework on June 21, 2021, through the [UNDRIPA]. Accordingly, the UNDRIP may be used to interpret Canadian law and legal obligations.” [Kebaowek First Nation v. Canadian Nuclear Laboratories, 2025 FC 319 at para 80]





Canada's Approach

Kebaowek First Nation v. Canadian Nuclear Laboratories, 2025 FC 319:

- “...in my opinion, FPIC is a right to a robust process. As explained above, it is not a veto or a right to a particular outcome. Nor is FPIC absolute, as States may infringe UNDRIP rights in certain limited circumstances (Article 46(2)).” (para 131)
 - “While the FPIC standard is not a veto, it requires significant robust processes tailored to consider the impacted Indigenous Nations laws, knowledge, and practices and employs processes that are directed toward finding mutual agreement.” (para 183)
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Bills 5 and C-5: Undermining UNDRIP

- Bill 5 is otherwise known as the *Protect Ontario by Unleashing our Economy Act*
- It includes the “One Project One Process” framework
- It also includes the *Special Economic Zones Act*:
 - Case-by-case designation for which laws don't apply to Special Economic Zones (SEZs)
 - SEZs must have a "significant and long-term" benefit to the province with a “high likelihood of success”
- Premier Ford has previously stated that the Ring of Fire would be an SEZ



Bills 5 and C-5: Undermining UNDRIP – Cont'd

Ford to declare Billy Bishop Airport a 'special economic zone' to allow jets

Ontario to declare Toronto island airport a special economic zone

Doug Ford moves to seize control of Billy Bishop Airport



Bills 5 and C-5: Undermining UNDRIP – Cont'd


- Bill C-5, or the *One Canadian Economy Act*
- The *Building Canada Act* designates “projects of national interest”
- Establishes the Major Projects Office (MPO) to review proposed national interest projects
- Criteria for national interest projects:
 - (a) strengthen Canada’s autonomy, resilience and security;
 - (b) provide economic or other benefits to Canada;
 - (c) have a high likelihood of successful execution;
 - (d) advance the interests of Indigenous peoples; and
 - (e) contribute to clean growth and to meeting Canada’s objectives with respect to climate change.

Bills 5 and C-5: Undermining UNDRIP – Cont'd

- Both Bills appear to violate Article 19 of UNDRIP which requires Canada and Ontario to "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."
- Any approvals for development in the Ring of Fire that do not include consultation and consent from Indigenous people may violate Article 32.
- If these Bills do not comply with what UNDRIP says (such as Article 19 and 32), they are inconsistent with UNDRIPA.




How can this inform the Regional Assessment?

- How will lands, territories, and resources be affected (including by exploration)? Are there concerns about displacement and relocation, or storage and disposal of hazardous materials?
 - How can Indigenous laws, knowledge, and practices shape decision-making in these areas, including determining where consent will not be provided or conditions for consent? Which impacts will require engagement in FPIC?
 - What civil, political, social, economic, and cultural rights are likely to be impacted? What does shared decision-making in addressing these concerns look like? What legislative or regulatory hurdles exist?
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How We Can Work Together

- IHRP/ABPA's research seeks to inform how international law, particularly UNDRIP, can shape the regional assessment process, as well as processes concerning the Ring of Fire as a whole. This includes both government and company processes.
 - Through the following break-out sessions, we welcome the opportunity to learn about your concerns and your vision for rights-respecting development.
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Thank You