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***Kukama Women's Federation
(Huaynakana Kamatahuara Kana Federation)***

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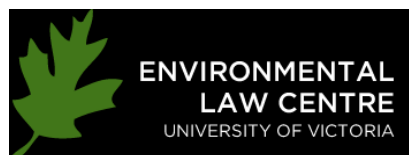
PETROPERU, Ministry of the Environment and others.

***Amicus Curiae* brief of the
Justice and Corporate Accountability Project and the
University of Victoria Environmental Law Centre**

September 2021



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September 16, 2021

Your Honour, Madame Justice of the Second Civil Chamber of the Loreto Superior Court of Justice
Ref. Case Number 0784-2021-0-1903-JR-CI-02

Please receive cordial greetings from the undersigned, representing the Environmental Law Centre, at the University of Victoria, in Canada and the Justice and Corporate Accountability Project (justice-project.org), with offices in the Thompson Rivers University's Faculty of Law (TRU) and the Osgoode Hall Faculty of Law at York University, both located in Canada.

The objective of this document is to present an *amicus curiae* brief to the court in relation to the constitutional process of *amparo* in Case Number 0784-2021-0-1903-JR-CI-02.

Having nothing further to add, we take this opportunity to convey our appreciation and respect.

Sincerely,

Calvin Sandborn, QC
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Case Number: 0784-2021-0-1903-JR-CI-02
Summary: Presenting amicus curiae

Table of Contents¹

<u>PART I - REQUEST TO PRESENT AN AMICUS CURIAE BRIEF</u>	4
<u>PART II – OVERVIEW</u>	5
<u>PART III: THE <i>UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES</i>: CANADA AND PERU HAVE MADE COMMON COMMITMENTS TO INDIGENOUS PEOPLES</u>	6
<u>PART IV – RECOGNITION OF INDIGENOUS DECISION-MAKING, GOVERNANCE, JURISDICTION, AND LAW</u>	8
<u>PART V – EXAMPLES OF INDIGENOUS CO-GOVERNANCE OVER LAND USE AND RESOURCE DEVELOPMENT</u>	11
<u>PART VI – THE RISING IMPORTANCE OF INDIGENOUS NATIONS AND INDIGENOUS LAWS IN ENVIRONMENTAL ASSESSMENTS IN CANADA</u>	15
<u>PART VII – THE ROLE OF INDIGENOUS GUARDIANS IN CANADA</u>	17
<u>APPENDIX</u>	21

¹ In the Spanish translation of this amicus brief, all of the citations in the footnotes are translated to Spanish, including those that are originally titled and written in English and that do not have an official Spanish version. The Spanish translation also includes an appendix with a bibliographic table containing all of the citations, including their original title in English and the Spanish translation.

PART I - REQUEST TO PRESENT AN AMICUS CURIAE BRIEF

Distinguished Justice of the Second Civil Chamber of the Loreto Superior Court of Justice:

We, Calvin Sandborn, QC, from the Environmental Law Centre at the University of Victoria in Canada, and Professors Charis Kamphuis and Shin Imai, and lawyer Isabel Dávila, members of the Justice and Corporate Accountability Project (JCAP), also in Canada, respectfully present this *amicus curiae* brief. Its objective is to describe legal developments in Canada that we believe will be useful for this court's consideration when presiding over the Kukama Women's Federation's (Huaynakana Kamatahuara Kana Federation) case in defense of the Marañón River and Kukama Indigenous peoples' rights in the region of Loreto, Peru.

The Environmental Law Centre is a non-profit organization that runs the largest environmental and public interest legal clinic in Canada. It is associated with the Faculty of Law at the University of Victoria, in the Canadian province of British Columbia. The Environmental Law Centre provides legal support for community organizations, Indigenous peoples, environmental groups and individuals working for the restoration, conservation, and protection of unique and diverse environments in the province. It also educates lawyers about public interest and environmental law.

JCAP is a non-governmental organization composed of lawyers, professors, and law students in Canada. Its members possess knowledge and expertise in the field of international and human rights law relating to human rights defenders, Indigenous communities, and peasant communities affected by extractive industry projects operated by transnational corporations.

PART II – OVERVIEW

1. Justice & Corporate Accountability Project (“JCAP”) intervenes in this case to support the petition of the Kukama Women’s Federation (Federación Huaynakana Kamatahuara Kana) to defend the rights of Kukama Indigenous peoples in the Loreto region, including their right to participate in the use, conservation, and administration of the Marañón River. This *amicus curiae* brief aims to highlight ways in which Canada and the province of British Columbia are moving towards the greater recognition of Indigenous rights to govern and act as guardians of their territories.
2. This *amicus* provides examples from Canada that mirror the remedy requested by the Kukama Women’s Federation in their petition. Namely, it supports their request that the court require Peru’s National Water Authority to establish an Interregional Watershed Council for the Marañón River, with the participation of the Indigenous organizations of Loreto in a decision-making capacity. Connected to this, the Federation requests the creation of committees for the micro-watershed of each tributary river in the Marañón basin (Loreto).
3. This *amicus* also provides examples from Canada that bolster the Kukama Women’s Federation request that the court require the Peruvian state to recognize and appoint Indigenous organizations in Loreto as guardians, defenders, and representatives of the Marañón River and its tributaries.
4. JCAP makes five principal submissions.
5. First, it identifies Canada and Peru’s common commitments to Indigenous Peoples.
6. Second, it reviews pertinent declarations made by Canada and British Columbia regarding Indigenous governance, Indigenous decision making, Indigenous jurisdiction, and Indigenous law in Indigenous territories – including commitments to adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples*.²
7. Third, it provides examples of Indigenous co-governance over land use and resource development in Canada.
8. Fourth, it discusses the rising importance of Indigenous Nations and their laws in colonial environmental assessment regimes in Canada.
9. Finally, it provides an overview of Indigenous guardians’ activities in Canada.
10. Each of these five submissions represent changes to laws and practice in Canada that further the alignment of Canada’s domestic laws to its international commitment to

² *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

uphold the rights recognized in the *United Nations Declaration on the Rights of Indigenous Peoples*.³ We believe they are of interest to the court given that Peru also endorsed the UN Declaration.⁴

PART III: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: CANADA AND PERU HAVE MADE COMMON COMMITMENTS TO INDIGENOUS PEOPLES

11. The Republic of Peru endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP or “the UN Declaration”) on September 13th, 2007⁵ and Canada endorsed UNDRIP on May 10th, 2016.⁶ The UNDRIP sets out a number of human rights commitments to which both countries have agreed. By endorsing the UNDRIP, both countries have committed to “in consultation and cooperation with indigenous peoples . . . take the appropriate measures, including legislative measures, to achieve the ends of [the] Declaration.”⁷ Signatories also recognize that the rights set out in UNDRIP constitute the “minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.”⁸
12. UNDRIP recognizes several inter-related rights that are relevant to the Kukama peoples’ claim to collectively co-manage the Marañón River, as well as the recognitions and initiatives that have occurred in Canada in this area, which we describe in the remainder of this *amicus curiae*. For example, UNDRIP’s preamble states that

“control by Indigenous peoples over developments affecting 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[.]”⁹

³ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

⁴ UNGA, 61st session, 107th Mtg, UN Doc A/61/PV.107 (2007) at 19, online: <<https://digitallibrary.un.org/record/606764?ln=en>> [<https://perma.cc/62SJ-2VX4>].

⁵ UNGA, 61st session, 107th Mtg, UN Doc A/61/PV.107 (2007) at 19, online: <<https://digitallibrary.un.org/record/606764?ln=en>> [<https://perma.cc/62SJ-2VX4>].

⁶ Government of Canada, “Speech delivered at the United Nations Permanent Forum on Indigenous Issues, New York, May 10,” (11 May 2016), online: *Government of Canada* <<https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/speech-delivered-at-the-united-nations-permanent-forum-on-indigenous-issues-new-york-may-10-.html>> [<https://perma.cc/N4DW-245D>].

⁷ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 38, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 43, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, Preamble, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

The foundation of this principle is Indigenous peoples' "right to self-determination[.]" recognized in article 3 of *UNDRIP*.¹⁰ This right includes Indigenous peoples' "right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources[.]"¹¹ This right also includes Indigenous peoples' 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."¹²

13. *UNDRIP* also recognizes that 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."¹³ This includes "the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources[.]"¹⁴ These rights also give rise to an obligation on the part of state signatories to "establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination."¹⁵
14. As the Supreme Court of Canada has noted, international human rights laws "were not meant to be theoretical aspirations or legal luxuries, but moral imperatives and legal necessities."¹⁶ The remainder of this *amicus curiae* describes certain recognitions, changes to law, and initiatives in Canada that have moved Canada and its provinces toward aligning its internal laws with its international commitment to uphold the rights recognized in *UNDRIP*.

¹⁰ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 3, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

¹¹ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 32 no 1, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

¹² *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 25, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

¹³ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 26 no 2, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

¹⁴ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 29 no 1, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

¹⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA 61 Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295, art 29 no 1, online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>> [Accessed 14 May 2021].

¹⁶ *Nevsun Resources Ltd v Araya*, 2020 SCC 5, 2020 SCC 5 (CanLII), at para 1, online: <<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18169/index.do>> [<https://perma.cc/C3GT-8QL4>].

PART IV – RECOGNITION OF INDIGENOUS DECISION-MAKING, GOVERNANCE, JURISDICTION, AND LAW

15. In recent years, the Provincial Government of British Columbia (“British Columbia”) has formally affirmed Indigenous decision making, Indigenous governance, Indigenous jurisdiction, and Indigenous law in Indigenous territories:

“Indigenous peoples have a unique connection to and constitutionally protected interest in their lands, including decision making, governance, jurisdiction, legal traditions, and fiscal traditions associated with those lands.”¹⁷

– *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples*

“[The Province of British Columbia and First Nations] share the following mutual and respective goals and objectives for reconciliation. . . . [to ensure] that lands and resources are managed in accordance with both provincial and Indigenous laws, knowledge and values[.]”¹⁸

– *BC Government, First Nations Summit, Assembly of First Nations, and Union of British Columbia Indian Chiefs, Joint Agenda*

“New government-to-government relationships require new approaches and models to the co-existence and exercise of [BC and First Nations’] respective jurisdictions, including strategic level planning, decision-making, and management roles and responsibilities. . . . [BC and First Nations will] [d]esign and implement new models of:

- strategic planning, including land use planning;
- decision-making approaches, models, and structures; [and]
- management . . .”¹⁹

– *BC Government, First Nations Summit, Assembly of First Nations, and Union of British Columbia Indian Chiefs, Joint Agenda*

¹⁷ British Columbia, “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (May 2018) at 3, online (pdf): <https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [<https://perma.cc/8VKJ-KS9K>].

¹⁸ British Columbia, *Joint Agenda: Implementing the Commitment Document – Shared Vision, Guiding Principles, Goals and Objectives* (2018), Goal and Objective 7 at 7, online (pdf): *Government of British Columbia* <news.gov.bc.ca/files/BC_FNLV_Vision.pdf> [<https://perma.cc/ZS27-ZG4N>].

¹⁹ British Columbia, *Joint Agenda: Implementing the Commitment Document – Concrete Actions: Transforming Laws, Policies, Processes and Structures* (2018), Goal 1 at 3, online (pdf): *Government of British Columbia* <https://news.gov.bc.ca/files/BC_FNLV_Actions.pdf> [<https://perma.cc/2MM3-RYRC>].

“There is a shared interest in environmentally sustainable resource development, informed by science and First Nations traditional knowledge and wisdom. [BC and First Nations] can better steward the land if we commit to better understand and implement the most progressive and successful aspects of our respective perspectives, approaches, and practices.”²⁰

– BC Government – First Nations Leadership Council – Guiding Principle²⁰

16. In 2019, British Columbia enacted the *Declaration of the Rights of Indigenous Peoples Act (DRIPA)*.²¹ This statute affirms the application of *UNDRIP* to BC laws and obliges British Columbia to act to ensure its laws are consistent with the UN Declaration.²² Thus, the province recognizes the inherent rights of Indigenous peoples to govern and manage development, lands, territories, and resources.²³
17. In May 2018, British Columbia released the “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (the Draft Principles).²⁴ British Columbia announced that the Draft Principles were released as a starting point²⁵ for new government-to-government relationships between the Province and Indigenous Peoples – and to “end the denial of Indigenous rights that have led to disempowerment and

²⁰ British Columbia *Joint Agenda: Implementing the Commitment Document – Shared Vision, Guiding Principles, Goals and Objectives* (2018), Principle 20 at p 4, online (pdf): Government of British Columbia <news.gov.bc.ca/files/BC_FNL_C_Vision.pdf> [<https://perma.cc/ZS27-ZG4N>].

²¹ *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, online: BC Laws <<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>> [<https://perma.cc/R4UV-CQG6>].

²² *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, s 3, online: BC Laws <<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>> [<https://perma.cc/R4UV-CQG6>], sections 2-3.

²³ These include the right to self-determination (article 3), to self-government (article 4), to participate in decision-making (article 18), to good-faith consultation and cooperation towards free, prior and informed consent (article 19), to maintain “political, economic and social systems or institutions” (article 20), to determine and develop priorities and strategies for exercising their right to development (article 23), to maintain relationships with “lands, territories, waters and coastal seas and other resources to uphold their responsibilities to future generations” (article 25), to “lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (article 26), to “own, use, develop and control the lands, territories and resources” (article 26), and to have their “laws, traditions, customs and land tenure systems” recognized by the State (article 27). *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, Schedule arts 3-4, 18-20, 23, 25- 27, online: BC Laws <<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>> [<https://perma.cc/R4UV-CQG6>].

Note that the statutory purposes of DRIPA include: “support the affirmation of and develop relationships with Indigenous governing bodies” -- *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, s 2(c), online: BC Laws <<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>> [<https://perma.cc/R4UV-CQG6>].

At enactment, the Office of the Premier of BC stated “To support self-determination and self-government, the act will enable the Province to recognize other forms of Indigenous governments...” -- British Columbia (Office of the Premier), News Release, “Indigenous human rights recognized in B.C. law with new legislation” (24 October 2019), online: BC Gov News <<https://news.gov.bc.ca/releases/2019PREM0116-002037>> [<https://perma.cc/8SUD-4M8X>].

²⁴ British Columbia, Office of the Premier, News Release, “Draft principles guide B.C. Public Service on relationships with Indigenous peoples” (22 May 2018), online: BC Gov News <<https://news.gov.bc.ca/releases/2018PREM0033-000978>> [<https://perma.cc/6ACJ-3EK5>].

²⁵ The Province has stated that the principles may evolve and change over time with future input and guidance from Indigenous peoples. British Columbia, “Frequently Asked Questions: The 10 Principles” (last accessed 16 April 2021), online: <<https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/frequently-asked-questions-ten-principles>> [<https://perma.cc/8PAH-XRAZ>].

assimilationist policies and practices.”²⁶ The contemplated new relationships include “involving Indigenous peoples in the effective decision making and governance of our shared home,” “putting in place effective mechanisms to support the transition away from colonial systems of administration and governance,” and “ensuring . . . space for the operation of Indigenous jurisdictions and laws.”²⁷ In the Draft Principles, British Columbia reiterates its recognition of Indigenous peoples’ inherent right to self-government and right to self-determination;²⁸ and accepts responsibility to align its “relationships and agreements with Indigenous peoples so that they are based on [the] recognition and respect” of those rights.²⁹

18. The Government of Canada (“Canada”) has taken similar steps. In 2017, Canada issued very similar “Principles respecting the Government of Canada’s relationship with Indigenous peoples.”³⁰ The Government of Canada stated,

“The ten principles are based on the recognition of Indigenous peoples, governments, laws, and rights, including the right to self-determination and the inherent right of self-government.”³¹

19. The Canadian Principles recognize the importance of free, prior, and informed consent as the goal of meaningful engagement in government-to-government, nation-to-nation, and

²⁶ British Columbia, “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (May 2018) at 1, online (pdf): <https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [<https://perma.cc/8VKJ-KS9K>].

The province has committed to “a new government-to-government relationship that builds on and goes beyond the legal duty to consult” and affirms this as a priority throughout the Draft Principles. British Columbia, “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (May 2018) at 1-3, 5, online (pdf):

<https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [<https://perma.cc/8VKJ-KS9K>].

²⁷ British Columbia, “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (May 2018) at 3, online (pdf): <https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [<https://perma.cc/8VKJ-KS9K>].

²⁸ British Columbia, “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (May 2018) at 1-4, 6, online (pdf):

<https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [<https://perma.cc/8VKJ-KS9K>].

²⁹ British Columbia, “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples” (May 2018) at 2, online (pdf): <https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf?platform=hootsuite> [<https://perma.cc/8VKJ-KS9K>].

³⁰ Canada (Department of Justice), “Principles respecting the Government of Canada’s relationship with Indigenous peoples” (14 February 2018), online: *Department of Justice* <<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>> [<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>].

Canada (Department of Justice), News Release, “Government of Canada Sets a Principled Foundation for Advancing Renewed Relationships with Indigenous Peoples based on the Recognition of Rights” (14 July 2017), online: *Government of Canada* <https://www.canada.ca/en/departement-justice/news/2017/07/government_of_canadasetsaprincipledfoundationforadvancingrenewed.html> [<https://perma.cc/B84G-5CNW>].

³¹ Canada, Department of Justice, News Release, “Government of Canada Sets a Principled Foundation for Advancing Renewed Relationships with Indigenous Peoples based on the Recognition of Rights” (14 July 2017), online: *Government of Canada* <https://www.canada.ca/en/departement-justice/news/2017/07/government_of_canadasetsaprincipledfoundationforadvancingrenewed.html> [<https://perma.cc/B84G-5CNW>].

Inuit-Crown relationships.³² These relationships include “ensuring . . . space for the operation of Indigenous jurisdictions and laws,” “involving Indigenous peoples in the effective decision-making and governance[.]” and “putting in place effective mechanisms to support the transition away from colonial systems of administration and governance[.]”³³

20. The Government of Canada introduced legislation to implement *UNDRIP* in December 2020 and on June 21, 2021, the legislation received Royal Assent and immediately came into force.³⁴

PART V – EXAMPLES OF INDIGENOUS CO-GOVERNANCE OVER LAND USE AND RESOURCE DEVELOPMENT

21. Indigenous Nations in Canada are increasingly exercising governance powers over their traditional territories. An excellent example is found in the territory of the Haida Nation. British Columbia has agreed with the Haida Nation that the Indigenous nation should co-govern land and resource management decisions across its territory.³⁵ British Columbia and the Haida Nation have equal representation on the Haida Gwaii Management

³² Canada, Department of Justice, “Principles respecting the Government of Canada’s relationship with Indigenous peoples” (14 February 2018), principle 6, online: *Department of Justice* <<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>> [<https://perma.cc/KFY6-6CW6>].

³³ Canada (Department of Justice), “Principles respecting the Government of Canada’s relationship with Indigenous peoples” (14 February 2018), principle 4, online: *Department of Justice* <<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>> [<https://perma.cc/KFY6-6CW6>].

³⁴ *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*, SC 2021, c 14, online: *Parliament of Canada* <<https://parl.ca/DocumentViewer/en/43-2/bill/C-15/royal-assent>> [<https://perma.cc/HD4R-JPBO>].

³⁵ *Kunst’aa guu – Kunst’aayah Reconciliation Protocol*, 11 December 2009, online (pdf): <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [<https://perma.cc/6JX6-W9ZT>]. This protocol was given effect in provincial law through the *Haida Gwaii Reconciliation Act*. *Haida Gwaii Reconciliation Act*, SBC 2010, c 17, online: <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10017_01> [<https://perma.cc/989J-MDQK>].

Council,³⁶ which makes key decisions on resources for the territory.³⁷ Decision-making powers include setting the region's comprehensive forestry strategy, maximum rate of forest harvest allowed, and standards for conserving heritage sites. This joint Management Council implements and amends the land use plan for the territory previously negotiated between British Columbia and the Haida Nation – a land use plan which sets out land use zones (including protected and special value areas to be maintained according to Haida law), management objectives, and benchmarks based on Haida cultural values.³⁸

³⁶ The Haida Gwaii Management Council was established under the *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, and the *Haida Gwaii Reconciliation Act*. *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 11 December 2009, schedule B, online (pdf): <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [https://perma.cc/6JX6-W9ZT]. *Haida Gwaii Reconciliation Act*, SBC 2010, c 17, s 3, online: <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10017_01> [https://perma.cc/989J-MDQK].

The Protocol was amended by a further agreement signed in 2016, which extended the financial support that British Columbia provides to fund participation in and implementation of the Protocol by the Haida Nation. *Amending Agreement of the Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 22 January 2016, s 4.0, online (pdf):

<https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [https://perma.cc/6JX6-W9ZT].

A more comprehensive description of the history and responsibilities of the Haida Gwaii Management Council can be found in their February 2018 newsletter. Haida Gwaii Management Council, "On Building Consensus: A Short History of the Council" *Forest Views: Making Decisions Together on Haida Gwaii* (February 2018) 4 at 4-5, online (pdf): *Haida Gwaii Management Council* <http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGMC_FEB18.pdf> [https://perma.cc/BFN7-B7R2].

³⁷ These decisions include the determination and approval of Annual Allowable Cut (forestry harvests), approval of management plans, developing policies and standards for the identification and conservation of heritage sites, developing a comprehensive forestry strategy, and the implementation or amendment of the 2007 *Haida Gwaii Strategic Land Use Agreement*. Per section 6.2 of the *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, the shared decision-making framework is outlined in schedule B. *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 11 December 2009, ss 6.2, schedule B ss 2.2-2.3 online (pdf):

<https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [https://perma.cc/6JX6-W9ZT].

³⁸ Most notably, this agreement includes the designation of Protected Areas and Special Value Areas to be maintained "in accordance with [Haida] laws, policies, customs, traditions and decision-making processes." *Haida Gwaii Strategic Land Use Agreement*, 13 September 2007, at 4 online (pdf): <<https://www.haidanation.ca/wp-content/uploads/2017/03/Haida-Gwaii-Strategic-Land-Use-Agreement-2.pdf>> [https://perma.cc/FG9H-5URJ]. *Haida Gwaii Land Use Objectives Order*, 21 September 2017, at 1-2, online (pdf): <<http://www.haidagwaiimanagementcouncil.ca/wp-content/uploads/2019/03/HGLUOO-Consolidated-Order-2017-Final-Signed.pdf>> [https://perma.cc/2WPW-MBW3]

22. With its equal representation from British Columbia and the Haida Nation, the Haida Gwaii Management Council operates by consensus³⁹ and is chaired by a mutually agreeable chair.⁴⁰

Co-Governance of Protected Areas

23. Indigenous participation in collaboratively managing protected areas is now common in Canada, with some Indigenous nations moving towards true co-governance of protected areas.⁴¹ Canada's commitment to the co-governance of protected areas is emphasized by its funding commitments; The Government of Canada recently announced that 52 communities across Canada are receiving "funding to establish Indigenous protected and conserved areas" or to "undertake early planning and engagement work that could result in additional" Indigenous Protected and Conserved Areas.⁴²

³⁹ *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 11 December 2009, schedule B ss 2.4-2.5, online (pdf):

<https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [<https://perma.cc/6JX6-W9ZT>]. *Haida Gwaii Reconciliation Act*, SBC 2010, c 17, s 3(3), online:

<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10017_01> [<https://perma.cc/989J-MDQK>].

Note that the Haida Gwaii Management Council is supported by a Solutions Table, again with equal representation from the Haida Nation and provincial government (specified in the Terms of Reference created under Schedule B section 4.3.3 of the *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*). *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 11 December 2009, schedule B s 4.3.3, online (pdf): <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [<https://perma.cc/6JX6-W9ZT>]. "Terms of Reference for the Solutions Table", as cited in email from Council of the Haida Nation to Calvin Sandborn (26 April 2021). The Solutions Table is responsible for "technical and operational" matters including reviewing applications and land use proposals and providing input to the Haida Gwaii Management Council who make the final decisions. *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 11 December 2009, schedule B ss 3.2-3.4, online (pdf):

<https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [<https://perma.cc/6JX6-W9ZT>]. *Haida Gwaii Reconciliation Act*, SBC 2010, c 17, s 3(3), online:

<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10017_01> [<https://perma.cc/989J-MDQK>]. Coast Funds, "Haida Nation: Kunst'aa Guu-Kunst'aayah – Moving to a Sustainable Future Together" (15 March 2019), online: *Coast Funds* <<https://coastfunds.ca/stories/kunsta-guu-kunstaayah-reconciliation-protocol-moving-to-a-sustainable-future-together/>> [<https://perma.cc/MP9U-TGYXr>].

⁴⁰ *Kunst'aa guu – Kunst'aayah Reconciliation Protocol*, 11 December 2009, schedule B ss 1.6-1.7, online (pdf):

<https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/haida_rp_fully_signed_and_dated_-_jan_22_2016.pdf> [<https://perma.cc/6JX6-W9ZT>].

Haida Gwaii Reconciliation Act, SBC 2010, c 17, s 3(2), online:

<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10017_01> [<https://perma.cc/989J-MDQK>].

⁴¹ From a national perspective, the *Canada National Parks Act* enables Canada to enter into Agreements with Aboriginal governments for the creation of oversight bodies, the enforcement of the Park Act, and the management of the Park.⁴¹ *Canada National Parks Act*, SC 2000, c 32, s 10(1), online: *Justice Laws* <<https://laws-lois.justice.gc.ca/eng/acts/n-14.01/FullText.html>> [<https://perma.cc/MH7S-8TDA>]. For further national parks that are collaboratively managed in Canada, see Canada (Parks), "Find a national park," online: *Parks Canada* <<https://www.pc.gc.ca/en/pn-np/recherche-parcs-parks-search>> [<https://perma.cc/WND4-4GWM>].

⁴² Government of Canada, "Indigenous leadership and initiatives," (28 January 2021), online: *Government of Canada* <<https://www.canada.ca/en/environment-climate-change/services/nature-legacy/indigenous-leadership-funding.html>> [<https://perma.cc/T7Q9-MKPK>].

24. A notable example of co-governance of a protected area is the Edézhíe Protected Area in Dehcho First Nations territory. This Indigenous Protected and Conserved Area⁴³ is governed by the Edézhíe Management Board. Altogether, the Dehcho First Nations appoint 5 members to the Management Board, while Canada appoints just one member to the Management Board.⁴⁴ The Management Board has a neutral chair and operates on a consensus basis.⁴⁵ Board decisions must be in line with “Dene way of life, including language, customs, traditions, historical experiences, spiritual practices, and laws.”⁴⁶
25. This is similar to the regime in Canada’s Gwaii Haanas National Park Reserve⁴⁷ in the Haida territory. This federal protected area is governed by the Archipelago Management Board, with equal representation from the Haida Nation and the federal government.⁴⁸ Again, this Management Board operates on a consensus basis -- and is co-chaired by representatives from each party.⁴⁹ The Archipelago Management Board governs planning, operations, and management of Gwaii Haanas and the surrounding marine area.⁵⁰ The Board is responsible for the development of ecosystem objectives, a Marine

⁴³ Government of Canada, “Edézhíe Protected Area” (9 December 2020), online: *Government of Canada* <<https://www.canada.ca/en/environment-climate-change/services/national-wildlife-areas/locations/edehzhie.html>> [<https://perma.cc/P6G3-YGPN>].

⁴⁴ *Agreement Regarding the Establishment of Edézhíe between Her Majesty the Queen in Right of Canada and Dehcho First Nations* (11 October 2018) s 4.2, 5.2, online (pdf): <<https://dehcho.org/docs/Edehzhie-Establishment-Agreement.pdf>> [<https://perma.cc/NX2U-LE48>].

⁴⁵ *Agreement Regarding the Establishment of Edézhíe between Her Majesty the Queen in Right of Canada and Dehcho First Nations*, 11 October 2018, s 5.2, 5.8, online (pdf): <<https://dehcho.org/docs/Edehzhie-Establishment-Agreement.pdf>> [<https://perma.cc/NX2U-LE48>].

⁴⁶ *Agreement Regarding the Establishment of Edézhíe between Her Majesty the Queen in Right of Canada and Dehcho First Nations* (11 October 2018) s 5.8, 3.2, 1.0 sub verbo “Dene Ahthí’e”, online (pdf): <<https://dehcho.org/docs/Edehzhie-Establishment-Agreement.pdf>> [<https://perma.cc/NX2U-LE48>].

⁴⁷ Gwaii Haanas consists of a Haida Heritage Site designated by the Haida Nation in 1985, a National Park Reserve established under the 1993 *Gwaii Haanas Agreement*, and a National Marine Conservation Area initiated under the *Gwaii Haanas Agreement* and established under the 2010 *Gwaii Haanas Marine Agreement*. The 1993 *Gwaii Haanas Agreement* established the joint designation of Gwaii Haanas as a protected area with the Archipelago Management Board as its governing body. Parks Canada, “History of establishment” (9 May 2019), online: *Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site* <<https://www.pc.gc.ca/en/pn-np/bc/gwaiihaanas/info/histoire-history>> [<https://perma.cc/LP3X-Q9NC>]. *Gwaii Haanas Agreement*, 30 January 1993, online: *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GwaiiHaanasAgreement.pdf>> [<https://perma.cc/QF7B-W8AM>]. *Gwaii Haanas Marine Agreement*, 16 January 2010, online (pdf): *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GHMarineAgreement.pdf>> [<https://perma.cc/QUW2-KZMF>].

⁴⁸ The AMB was originally composed of two representatives from each party, with Parks Canada representing the federal government. One representative from Fisheries and Oceans Canada (DFO) matched by another representative from the Council of the Haida Nation joined in 2011 following the signing of the *Gwaii Haanas Marine Agreement*. *Gwaii Haanas Agreement*, 30 January 1993, s 4.4, online: *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GwaiiHaanasAgreement.pdf>> [<https://perma.cc/QF7B-W8AM>]. *Gwaii Haanas Marine Agreement*, 16 January 2010, s 3.1, online (pdf): *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GHMarineAgreement.pdf>> [<https://perma.cc/QUW2-KZMF>].

⁴⁹ *Gwaii Haanas Agreement*, 30 January 1993, ss 4.5, 5.1-5.5, online: *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GwaiiHaanasAgreement.pdf>> [<https://perma.cc/QF7B-W8AM>].

⁵⁰ *Gwaii Haanas Agreement*, 30 January 1993, s 4.3, online: *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GwaiiHaanasAgreement.pdf>> [<https://perma.cc/QF7B-W8AM>].

Under the 2010 *Gwaii Haanas Marine Agreement*, the Gwaii Haanas Marine Area was designated to include the waters surrounding Gwaii Haanas and expanding the co-managed area beyond the region defined in the 1993 agreement. *Gwaii Haanas Marine Agreement*, 16 January 2010, s 4.1, online (pdf): *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GHMarineAgreement.pdf>> [<https://perma.cc/QUW2-KZMF>].

Area Strategy/Management Plan, work plans, and recommendations for permitting and licensing in the Gwaii Haanas Marine Area.⁵¹

26. The *Gwaii Haanas Agreement* provides that, “all actions related to the planning, operation, and management of the Archipelago will respect . . . the Haida culture.”⁵² Note that Indigenous guardian/watchmen programs are involved in stewarding, monitoring, and managing both of the above protected areas.⁵³

PART VI – THE RISING IMPORTANCE OF INDIGENOUS NATIONS AND INDIGENOUS LAWS IN ENVIRONMENTAL ASSESSMENTS IN CANADA

27. The role of Indigenous Nations and Indigenous Laws is rising dramatically in Canada, in the context of resource use and environmental protection. For example, British Columbia’s new *Environmental Assessment Act* reflects the acknowledgment that Indigenous nations have inherent jurisdiction and the right to participate in decisions about their territories. Section 2 of the Act sets out its purposes:

“The purposes of the [British Columbia Environmental Assessment Office] are [to] . . .

promote sustainability by protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities by . . .

- using the best available science, Indigenous knowledge and local knowledge in decision making under the Act. . .

⁵¹ *Gwaii Haanas Marine Agreement*, 16 January 2010, s 4.1, online (pdf): *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GHMarineAgreement.pdf>> [<https://perma.cc/QUW2-KZMF>].

⁵² *Gwaii Haanas Agreement*, 30 January 1993, s 3.1, online: *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2017/03/GwaiiHaanasAgreement.pdf>> [<https://perma.cc/QF7B-W8AM>].

The Archipelago Management Board worked with Haida and local communities, stakeholder groups to create the *Gwaii Haanas Gina ‘Waadluxan Kilguhlga Land-Sea-People Management Plan*, which is guided by principles “based on ethics and values from Haida law” and confirms that Board decision-making is “informed by the best available information including Haida traditional knowledge and laws, local knowledge and science.” This Management Plan sets objectives and guidelines for planning in Gwaii Haanas through 2028. *Gwaii Haanas Gina ‘Waadluxan Kilguhlga Land-Sea-People Management Plan*, November 2018, at 2, 6-7, 14, 20, online (pdf): *Haida Nation* <https://www.haidanation.ca/wp-content/uploads/2018/11/Gwaii-Haanas-LSP-Plan-2018_EN_lowres.pdf> [<https://perma.cc/4UTE-XLZ2>].

The advisory committee was established as required under Canadian legislation and the 2010 Interim Management Plan for the Gwaii Haanas marine area. It advises the AMB and represents Haida involvement at yet another layer of management decision-making. Parks Canada, “Gwaii Haanas Advisory Committee Terms of Reference” (6 June 2014), online: *Gwaii Haanas National Park Reserve, National marine Conservation Area Reserve, and Haida Heritage Site* <<https://www.pc.gc.ca/en/pn-np/bc/gwaiihaanas/info/consultations/consultatif-advisory/mandat-terms>> [<https://perma.cc/37N6-LYZR>].

⁵³ *Agreement Regarding the Establishment of Edézhíe between Her Majesty the Queen in Right of Canada and Dehcho First Nations* (11 October 2018) s 4.3, online (pdf): <<https://dehcho.org/docs/Edézhíe-Establishment-Agreement.pdf>> [<https://perma.cc/NX2U-LE48>].

The Haida Gwaii Watchmen Program protects cultural sites in and around Gwaii Haanas. *Gwaii Haanas Gina ‘Waadluxan Kilguhlga Land-Sea-People Management Plan*, November 2018, at 18, online (pdf): *Haida Nation* <https://www.haidanation.ca/wp-content/uploads/2018/11/Gwaii-Haanas-LSP-Plan-2018_EN_lowres.pdf> [<https://perma.cc/4UTE-XLZ2>].

- coordinating assessments with other governments, where appropriate, including Indigenous nations, and with other provincial ministries and agencies; . . .

support reconciliation with Indigenous peoples in British Columbia by

- supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples,
- recognizing the inherent jurisdiction of Indigenous nations and their right to participate in decision making in matters that would affect their rights, through representatives chosen by themselves [and]. . .
- collaborating with Indigenous nations in relation to reviewable projects, consistent with the United Nations Declaration on the Rights of Indigenous Peoples[.]”⁵⁴

– *British Columbia Environmental Assessment Act, Section 2*

[re-formatted for clarity]

28. In certain circumstances, Canada and British Columbia now empower Nations to actually carry out federal or provincial Environmental (Impact) Assessments.⁵⁵ Even in cases where Government chooses not to delegate the power to conduct a “substitute assessment” to an Indigenous nation, British Columbia has numerous statutory obligations to Indigenous Nations -- including seeking consensus,⁵⁶ assessing impacts on Indigenous Nations and their rights,⁵⁷ routinely inviting Indigenous Nations to sit on assessment technical advisory committees,⁵⁸ and acting consistent with Indigenous land use plans for the affected area.⁵⁹

Acknowledgment of Indigenous laws is increasingly important in Canada’s environmental impact assessment processes. For example, in Canada’s assessment process for the Blackwater Gold Mine project, which would impact the territories of several Indigenous nations, the Canadian Federal Government mandated that Carrier Sekani First Nations’⁶⁰ Indigenous laws themselves should form the basis of benchmarks -- and that projects must comply with Indigenous water quality standards.⁶¹ Notably, this project is also overseen by a Collaboration Working Group,

⁵⁴ *Environmental Assessment Act*, SBC 2018, c 51, s 2, online: *BC Laws*

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>> [<https://perma.cc/3DDW-NY4P>].

⁵⁵ Or portions thereof. *Impact Assessment Act*, SC 2019, c 28, s 31(1), online: *Justice Laws*

<<https://laws.justice.gc.ca/eng/acts/l-2.75/FullText.html>> [<https://perma.cc/SX7R-9668>]; *Environmental Assessment Act*, SBC 2018, c 51, 24(3)(a)(ii) and s.41(1) and (2), online: *BC Laws*

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>> [<https://perma.cc/3DDW-NY4P>].

⁵⁶ *Environmental Assessment Act*, SBC 2018, c 51, ss 16, 19, 28, 29, 31, 32, 34, 35, 73, online: *BC Laws*

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>> [<https://perma.cc/3DDW-NY4P>].

⁵⁷ *Environmental Assessment Act*, SBC 2018, c 51, s 25(1), online: *BC Laws*

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>> [<https://perma.cc/3DDW-NY4P>].

⁵⁸ *Environmental Assessment Act*, SBC 2018, c 51, s 21(3), online: *BC Laws*

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>> [<https://perma.cc/3DDW-NY4P>].

⁵⁹ *Environmental Assessment Act*, SBC 2018, c 51, s 25(2)(g), online: *BC Laws*

<<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>> [<https://perma.cc/3DDW-NY4P>].

⁶⁰ Including the Lhoosk’uz Dené Nation, Ulkatcho First Nation, Skin Tyee Nation, T̓silhqot’in Nation, Métis Nation British Columbia, Saik’uz First Nation, Stlat’en First Nation, Nadleah Whut’en First Nation, Nazko First Nation and Nee-Tahi-Buhn Band.

⁶¹ Canadian Environmental Assessment Agency, “Blackwater Gold Mine Environmental Assessment Report” (15 April 2019) at 110, online (pdf): <<https://aeic-iaac.gc.ca/050/documents/p80017/129204E.pdf>> [Accessed 23 April 2021].

which is co-governed by the Indigenous Nadleh Whut'en First Nation, Stelat'en First Nation, and the Province of British Columbia.⁶² This group oversees major projects in the territory, makes consensus-based decisions on major projects, including consensus recommendations on their assessment and regulatory review.⁶³

PART VII – THE ROLE OF INDIGENOUS GUARDIANS IN CANADA

“Indigenous peoples are connected to their traditional territories, which include lands, waters and ice. They use, govern, and conserve traditional territories in accordance with Indigenous knowledge systems, laws, and values. One way for Indigenous communities to protect and manage land and marine resources is through Indigenous Guardians programs. . . . Recognizing the intimate connection between Indigenous peoples and the environment as well as the positive benefits Indigenous Guardians programs bring to Indigenous communities, the federal government recently announced funding to support Indigenous Guardians programs. . . .

To date, Indigenous communities in Canada have launched Guardians programs in various regions of the country, including land and marine protected areas. An analysis of two existing Indigenous Guardians programs in Canada’s Northwest Territories has found that they deliver social, economic, cultural and environmental value and, with the support from a national network, long-term benefits could be secured, notably in terms of increased consistency and additional, specialized training.”⁶⁴

– Government of Canada, Sixth Report to the *Convention on Biological Diversity*

29. In Canada, Indigenous Guardians (also known as Watchmen, Rangers and Stewards) have been in operation for several decades.⁶⁵ There are at least 56 guardians programs and networks in operation across Canada.⁶⁶ Guardians are individuals that are appointed “by a

⁶² *Collaboration Agreement* (2 April 2015) s 4.3, online (pdf): <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/cstc_-_collaboration_agreement_-_signed_april_2015.pdf> [Accessed 14 May 2021]. Note that other First Nations have also been invited to this working group. Rina Freed, “Development and Implementation of the Yinka Dene Surface Water Law,” (12 May 2021) [Video Archived with the Environmental Law Centre].

⁶³ *Collaboration Agreement* (2 April 2015) s 5.3, online (pdf): <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/cstc_-_collaboration_agreement_-_signed_april_2015.pdf> [Accessed 14 May 2021].

⁶⁴ Government of Canada, *Sixth National Report* (Submitted 24 December 2018, last updated 10 June 2019), online: *The Clearing-House Mechanism of the Convention on Biological Diversity (CHM)* <<https://chm.cbd.int/database/record?documentID=241248>> [<https://perma.cc/4D9E-SJML>].

⁶⁵ Government of Canada, *Sixth National Report* (Submitted 24 December 2018, last updated 10 June 2019), online: *The Clearing-House Mechanism of the Convention on Biological Diversity (CHM)* <<https://chm.cbd.int/database/record?documentID=241248>> [<https://perma.cc/4D9E-SJML>]. Canada enables these programs through multiple instruments, including the *Canada National Parks Act* section 10(1), which allows the federal government to enter into Agreements with Indigenous nations for management and enforcement in protected areas. *Canada National Parks Act*, SC 2000, c 32, s 10(1), online: *Justice Laws* <<https://laws-lois.justice.gc.ca/eng/acts/n-14.01/FullText.html>> [<https://perma.cc/MH7S-8TDA>].

⁶⁶ Indigenous Guardians Toolkit, “Indigenous Guardians Map,” online: *Indigenous Guardians Toolkit* <<https://www.indigenousguardianstoolkit.ca/map>> [<https://perma.cc/8BRP-YMGF>].

[Indigenous] Nation to monitor, steward and protect their territory.”⁶⁷ Guardians patrol their territorial lands and waters, enforce environmental laws by reporting violators and educating the public, and watch for issues such as overfishing, poaching, illegal logging, pollution, and damage to cultural sites.

They “uphold and enforce traditional and contemporary Indigenous law passed down over countless generations, and work together to monitor, protect and restore . . . the cultural and natural resources of . . . [their] territories.”⁶⁸

30. Among other duties, Heiltsuk Guardian boats monitor coastal fisheries; Kitasoo/Xai’xais Guardian Watchmen fend off grizzly poachers; and Haida Watchmen halt souvenir collection at their World Heritage Site.⁶⁹ In the interior of BC, Tsilhqot’in Rangers regulate wild mushroom harvesting and northern Guardians protect endangered caribou from both industry and predators.⁷⁰ Alberta’s Mikisew Cree Guardians patrol the oil sands and Athabasca Chipewyan Guardians watchdog the tourism and mining activities that imperil Canada’s Wood Bison.⁷¹
31. Guardians provide multiple benefits to Canadian society as a whole and to Indigenous communities -- including education, training, jobs, community health and healing, self-governance, environmental monitoring, environmental regulation, facilitating intergenerational connections, and, increasingly, environmental enforcement powers.⁷²
32. Guardian programs are an important way of integrating Indigenous traditional ecological knowledge with Western knowledge, to optimize overall resource management and environmental protection. The profound benefits of utilizing traditional ecological knowledge to improve resource management has been recognized in a recent United

⁶⁷ *Fisheries Resources Reconciliation Agreement*, 26 July 2019, s 1(1.1) at 4, online (pdf): *Haida Nation*

<<https://www.haidanation.ca/wp-content/uploads/2020/08/FRRRA-Packaged-Documents.pdf>> [<https://perma.cc/452F-J9DV>].

⁶⁸ Coastal First Nations, “Coastal Guardian Watchmen Support,” online: *Coastal First Nations* <<https://coastalfirstnations.ca/our-environment/programs/coastal-guardian-watchmen-support/>> [<https://perma.cc/AH59-MENG>].

⁶⁹ Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020) at 112-113, 64, 66-67, online (pdf): <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>].

⁷⁰ Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020) at 84, 72-73, online (pdf): <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>].

⁷¹ Mikisew Cree First Nation, “Community Based Monitoring Program”, online: *Mikisew Cree First Nation* <<http://mikisewgir.com/cbm>> [<https://perma.cc/SX8P-YLNA>]; Indigenous Guardians Toolkit, “Athabasca Chipewyan First Nation” (2021), online: *Indigenous Guardians Toolkit* <<https://www.indigenousguardianstoolkit.ca/communities/Athabasca-chipewyan-first-nation>> [<https://perma.cc/9226-AG64>].

⁷² Frank Brown and Paivi Abernethy, *Indigenous Guardian Network Development & Training – Discussion Paper* (February 2019) at 8 as paraphrased in Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020), online (pdf): <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>]; Also, for further information about specific programs, see Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020) at 58-62, 78-87, online (pdf): <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>].

Nations report and on the pages of *Scientific American*⁷³ -- and has been formally acknowledged by the Governments of Canada and British Columbia. For example, the Government of British Columbia officially agreed to this Guiding Principle of Reconciliation:

“There is a shared interest in environmentally sustainable resource development, informed by science and First Nations traditional knowledge and wisdom. [BC and First Nations] can better steward the land if we commit to better understand and implement the most progressive and successful aspects of our respective perspectives, approaches and practices.”⁷⁴

33. While most Guardian programs have enforced colonial laws through education and reporting violations to federal and provincial officials, some are moving to systems where the Indigenous Guardians (and similar Indigenous officials) have full law enforcement powers – and have the power to enforce their own Indigenous laws. Precedents for this change exist in the US and in Canada.⁷⁵
34. The substantial and wide-ranging benefits of the program are made clear by Canada’s continued investments into the program. In its 2017 federal budget, the federal government invested “\$25 million over five years to support a pilot initiative to establish a national network of existing Indigenous Guardians programs.”⁷⁶ The government stated, The objective of this initiative is to give Indigenous peoples greater responsibility and resources to manage their traditional lands and waterways. It will facilitate partnership with Indigenous communities, and provide additional funding to existing Indigenous programs to support their activities related to monitoring ecological health, maintaining cultural sites, and protecting sensitive areas and species.⁷⁷

This financial support is likely to expand. In Canada’s 2021 budget, Indigenous Guardians were listed as a top five priority of the federal government’s \$2.3 billion and

⁷³ The Case for a Guardian Network Initiative,” (June 2020), online (pdf): <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>]; Also, for further information about specific programs, see Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020) at pp. 45-55 and 96-109

⁷⁴ British Columbia, *Joint Agenda: Implementing the Commitment Document – Shared Vision, Guiding Principles, Goals and Objectives* (2018) at 4 no 2, online (pdf): *Government of British Columbia* <news.gov.bc.ca/files/BC_FNLN_Vision.pdf> [<https://perma.cc/ZS27-ZG4N>]. Also, for further information about specific programs, see Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020) at 48, online (pdf): <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>].

⁷⁵ Corbin Greening, Lauren Mar, Ruben Tillman, and Calvin Sandborn (Environmental Law Centre), “The Case for a Guardian Network Initiative,” (June 2020), online (pdf) at pp. 78-87 : <<https://elc.uvic.ca/wordpress/wp-content/uploads/2020/08/2020-01-01-Case-for-a-Guardian-Network-Initiative-compressed-for-email.pdf>> [<https://perma.cc/7RJ2-F382>]

⁷⁶ Government of Canada, *Sixth National Report* (Submitted 24 December 2018, last updated 10 June 2019), online: *The Clearing-House Mechanism of the Convention on Biological Diversity (CHM)* <<https://chm.cbd.int/database/record?documentID=241248>> [<https://perma.cc/4D9E-SJML>].

⁷⁷ Government of Canada, *Sixth National Report* (Submitted 24 December 2018, last updated 10 June 2019), online: *The Clearing-House Mechanism of the Convention on Biological Diversity (CHM)* <<https://chm.cbd.int/database/record?documentID=241248>> [<https://perma.cc/4D9E-SJML>].

five-year plan “[t]o address the biodiversity crisis, fight climate change, and protect and create jobs.”⁷⁸

35. A Specific highly successful example of a guardian program is the Coastal Guardian Watchmen, who are a network of Coastal First Nations Guardians programs on the North and Central Coast of British Columbia, and Haida Gwaii.⁷⁹ These Guardian Watchmen have a standardized training program⁸⁰ and a regional monitoring system that collects in-depth data.⁸¹ Canada has committed to enter into “agreements to support a greater role for the [Coastal] Nations’ guardian and watchmen in fisheries monitoring and enforcement activities.”⁸²

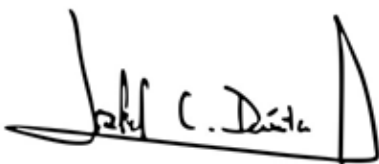
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⁷⁸ Government of Canada, “Budget 2021: A Recovery Plan for Jobs, Growth, and Resilience,” (2021) at 182, online (pdf): <https://www.budget.gc.ca/2021/home-accueil-en.html> > [\[https://perma.cc/FJ5P-WYD3\]](https://perma.cc/FJ5P-WYD3).

⁷⁹ Coastal First Nations, “Coastal Guardian Watchmen Support,” *Coastal First Nations*, online: *Coastal First Nations* <<https://coastalfirstnations.ca/our-environment/programs/coastal-guardian-watchmen-support/>> [\[https://perma.cc/5UWT-HAJ7\]](https://perma.cc/5UWT-HAJ7).

⁸⁰ Coastal First Nations, “Training and Professional Development,” *Coastal First Nations*, online: *Coastal First Nations* <<https://coastalfirstnations.ca/our-environment/programs/training-and-professional-development/>> [\[https://perma.cc/9JTH-ZDFF\]](https://perma.cc/9JTH-ZDFF).

⁸¹ Coastal First Nations, “Regional Monitoring System,” *Coastal First Nations*, online: *Coastal First Nations* <<https://coastalfirstnations.ca/our-environment/programs/regional-monitoring-system/>> [\[https://perma.cc/43U9-CP4Y\]](https://perma.cc/43U9-CP4Y); Indigenous Guardians Toolkit, “Setting Priorities: Evolving Coastal First Nations Regional Monitoring,” online: *Indigenous Guardians Toolkit* <<https://www.indigenousguardianstoolkit.ca/story/setting-priorities-evolving-coastal-first-nations-regional-monitoring/>> [\[https://perma.cc/6GU4-T245\]](https://perma.cc/6GU4-T245).

⁸² *Fisheries Resources Reconciliation Agreement*, 26 July 2019, s 8f(iv), online (pdf): *Haida Nation* <<https://www.haidanation.ca/wp-content/uploads/2020/08/FRRR-Packaged-Documents.pdf>> [\[https://perma.cc/452F-J9DV\]](https://perma.cc/452F-J9DV).

APPENDIX

No.	Title
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