

Responding to TRC Call to Action # 48
Endorsing the United Nations Declaration on the Rights of Indigenous Peoples
as a framework for reconciliation

Background notes

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This backgrounder is intended as a companion to the proposed statement: *Response to TRC Call to Action #48*.

In its Call to Action # 48, the Truth and Reconciliation Commission of Canada (TRC), asks churches and faith communities *to formally adopt and comply with the principles, norms and standards of the United Nations Declaration on the Rights of Indigenous Peoples as a framework for reconciliation*. The TRC goes on to ask us to indicate this commitment by March 31, 2016. *Why is this request important, and why should the CRC in Canada take the steps to respond?* The contents of this memo are our considered response to this and related questions.

Other documents of note for these reflections:

- UNDRIP Text: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- *New Covenant Declaration* (1987) – (LINK NEEDED)
- Belhar Confession: <https://www.crcna.org/welcome/beliefs/ecumenical-faith-declaration/confession-belhar>

A. What is the UNDRIP?¹

Adopted by the General Assembly in September 2007, the UN Declaration on the Rights of Indigenous Peoples (the Declaration) is unique among UN human rights instruments: over the course of 20 years it was debated and crafted by Indigenous peoples as rights holders themselves. This process of Indigenous leadership in the articulation of Indigenous rights is appropriate given the international scope of colonialism and the practice of disregarding the voices and perspectives of Indigenous peoples.

As a General Assembly *Declaration* UNDRIP a reflection of international norms to which States are *morally* committed. The Declaration enumerates individual and collective rights of Indigenous peoples such as: culture, identity, language, employment, health, and education etc. It “emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations”. It “prohibits discrimination against indigenous peoples”, and it “promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development”. These are similar to rights enjoyed by all people in Canada.

UNDRIP is a non-binding instrument with *possible* legal implications for *state* actors:

- Canadian courts *may* use the *Declaration* to interpret human rights in Canada;
- Within their mandates, human rights institutions in Canada *may* use it to interpret human rights;
- Treaty bodies *may* use it to interpret international human rights instruments.

¹ Elements of this discussion are drawn from: <http://archive.anglican.ca/gc2010/resolutions/a176/index.html>



The *Declaration* was extensively debated and scrutinized at the UN. This scrutiny included consideration of the relationship/balance of UNDRIP rights and the collective and individual rights of non-Indigenous people. At the same time the *Declaration* establishes a helpful international norm (Free, prior and informed consent) that Indigenous peoples’ rights are automatically operative in relationships or initiatives concerning Indigenous peoples.

B. How is UNDRIP connected to existing commitments of the CRC?

The CRC’s actions regarding TRC and Indigenous justice and reconciliation have flowed quite deliberately from a lengthy history of deliberation and action. The most significant foundation of our recent work is the principles laid down in the 1987 New Covenant. That document has remarkable synergy with the UNDRIP. Furthermore, the reconciliation principles of the Belhar Confession, also have relevance to any CRC affirmation of the UNDRIP.

1. *A New Covenant with Aboriginal Peoples – 1987 (& 2007)*

In 1987 the Council of Christian Reformed Churches in Canada affirmed the *New Covenant*² statement under the signature of Rev. Arie VanEek. This was reaffirmed in 2007 under the signature of Rev. Bruce Adema. A comparison of the 1987 statement and the Declaration suggests continuity between them:

New Covenant, 1987 - Highlights (numbered in paragraph/block caps sequence)	UN Declaration on the Rights of Indigenous Peoples <i>pertinent articles and/or principles</i>
3. Rectify historic injustice by recognizing Aboriginal Rights in the Constitution	Preamble emphasizes Indigenous equality and names the historic injustices of colonialism
4. Old covenants, in the form of treaties “have not served the demands of justice.” They have been broken without the consent of Aboriginal People	As above
5., 7. Covenants have moral and spiritual dimensions. Aboriginal people are distinct and self-determining.	Preamble – Indigenous rights are derived from cultural and spiritual traditions.
8. Affirmation of the historic nature of self-government. Aboriginal rights are a moral issue “touching the very soul and heart of Canada”	As above
9. Enumeration of rights: a) distinct peoples b) adequate land base and affirmation of “spiritual bond between the people and land” c) right to self-determination: Aboriginal peoples “must be architects of their own future, freely and responsibly.”	a) Articles 8:2 (a) and 15:1 protect and affirm distinct identity b) Article 25 names Indigenous peoples’ “distinctive spiritual relationship” with land/water c) Articles 3, 4&5 (among others) emphasize self-determination and the institutional frameworks of self-government
10. Self-government is a means for Aboriginal People to give expression to their distinctiveness and to develop “their own cultural, social and religious institutions to meet the needs of their own people.”	Article 12:1 establishes a right to practice develop and teach “spiritual and religious traditions, customs and ceremonies” Article 13:1 protects culture and language Article 34 establishes a right to institutional structures and distinctive customs and spirituality.

² A New Covenant Towards the Constitutional Recognition and Protection of Aboriginal Self-Government in Canada
A Pastoral Statement by the Leaders of the Christian Churches on Aboriginal Rights and the Canadian Constitution.
Signed in large part by (present day) Kairos churches.

11. Aboriginal rights should be entrenched in the constitution as a means to overcome the “intransigence” of governments.	Article 19 – states required to cooperate in “good faith” Article 32: 2-3 – states consult and cooperate in good faith, and by providing effective mechanisms for just and fair redress Article 40 establishes a right to “fair procedures” and “effective remedies” for the resolution of conflicts.
12. affirms diversity of Aboriginal people. “There can be no single, uniform model applicable to all Aboriginal Peoples”	Preamble “recognizes that the situation of indigenous peoples varies from region to region...”
13. Prevent extinguishment of rights and establish rights of consent on amendments/actions affecting Aboriginal people	Article 37 establishes a right of treaty enforcement and observance (i.e. contra extinguishment). Article 19 establishes a right of free, prior and informed consent on “legislative or administrative measures that may affect” Indigenous peoples.

2. *Belhar Confession – A CRCNA Ecumenical Faith Declaration*

The Belhar Confession (BC) calls the church to unity and reconciliation and a commitment to resisting alienation, hatred and enmity between people. This contemporary confession rose out of the context of apartheid in South Africa. It is important to recognize that the architects of apartheid drew on Canadian policy and experience in *Indian Affairs* and the reserve system. Therefore the themes of reconciliation and unity expressed in BC from the context of South Africa have relevance to Indigenous-Settler relations in Canada.

BC raises unity and reconciliation as a gift and obligation of the church. “Unity must become visible so that the world may believe that separation, enmity and hatred between people and groups is sin which Christ has already conquered, and accordingly that anything which threatens this unity may have no place in the church and must be resisted.” Furthermore, BC articulates the following belief: “that God's lifegiving Word and Spirit has conquered the powers of sin and death, and therefore also of irreconciliation and hatred, bitterness and enmity, that God's lifegiving Word and Spirit will enable the church to live in a new obedience which can open new possibilities of life for *society and the world.*” (italics added for emphasis)

It is clear that the BC is a call to passionate and substantive commitments to reconciliation and a turning away from systemic racism. Indigenous leaders, and specifically the Truth and Reconciliation Commission of Canada have called the UN Declaration on the Rights of Indigenous People a *framework for reconciliation*. Therefore, efforts to learn from and implement the principles of the Declaration are an opportunity for the church to live out its articulated commitments to reconciliation in the Belhar Confession and the *New Covenant*.

C. Why is UNDRIP a *framework for reconciliation*?

The TRC says that, in order to *practice reconciliation*, “Canadians must remain committed to the ongoing work of establishing and maintaining respectful relationships.” (p. 21 TRC Summary) Colonialism imposed relationships of paternalism that have not respected the identity and cultures of Indigenous peoples. The rights framework articulated by Indigenous peoples in UNDRIP is an affirmation of the

humanity, dignity and identity of Indigenous Peoples. The TRC explains that the principles of UNDRIP are a *reconciliation framework* in that they provide for:

- the revitalization of Indigenous culture, language, spirituality and governance systems;
- government commitments to dismantle political and bureaucratic cultures focussed on assimilation;
- church actions to address past wrongs; a turning toward respect for Indigenous identity; and support for Indigenous struggles for justice and equity.

In summary, “for Canadians from all walks of life, reconciliation offers a new way of living together” (22)

S. James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples explains the particular connection of UNDRIP rights of self-determination and reconciliation:

It is perhaps best to understand the Declaration and the right of self-determination it affirms as instruments of reconciliation. Properly understood, self-determination is an animating force for efforts toward reconciliation—or, perhaps, more accurately, conciliation—with peoples that have suffered oppression at the hands of others. Self-determination requires confronting and reversing the legacies of empire, discrimination, and cultural suffocation. It does not do so to condone vengefulness or spite for past evils, or to foster divisiveness but rather to build a social and political order based on relations of mutual understanding and respect. That is what the right of self-determination of indigenous peoples, and all other peoples, is about. (244 TRC Summary Report)

Anaya’s eloquence in support of Indigenous self-determination is an echo of the commitments that Churches in Canada made in the *New Covenant*. Reconciliation is built on relationships of mutual respect. UNDRIP provides a clear expression of Indigenous self-determination that stands in stark contrast to the broken past of colonialism and its presumptions of Euro-superiority – it is therefore a grounding of a new relationship.

As explained earlier, as a *Declaration* in the UN system, UNDRIP does not have formal legal status as a human rights instrument but is a set of norms to which *states* are morally committed. As *non-state actors* seeking to honour the UNDRIP as a framework for reconciliation, our church is not capable of the state actions required for the fulfillment of these rights. However, in light of TRC, we believe that in endorsing UNDRIP as a *framework for reconciliation* the CRC is continuing and deepening its efforts to turn toward:

- respect for Indigenous identity and self-determination;
- acts of advocacy and citizenship that bear witness to and support Indigenous peoples’ efforts for healing, justice and implementation of rights;
- relationships of mutual understanding and respect.

D. Questions on specific Articles:

Article 3: (see also comparison chart to *New Covenant*, *item 9c* etc.) This expansive concept of Indigenous self-determination is a call to return to the *nation to nation* principles of the original treaties. Furthermore it should be understood in distinction to the historic trend of Indian Act policy in Canada that has considered Indigenous people to be wards of the state. Given the lingering and intergenerational effects of colonialism in Canada, a right to self-determination (Indigenous people as *architects of their own future*) necessarily includes capacity supports.



Article 12.1: (see also comparison chart to *New Covenant, item 10*) This article honours a right to “manifest, practice, develop and teach [Indigenous] spiritual and religious traditions, customs and ceremonies”. This is consistent with basic principles of religious freedom – those of free consent and free exercise. CRC affirmation of this element of the Declaration can proceed on the basis of a respect for religious freedom and on the basis of the prior commitments in the 1987 *New Covenant*.

It is particularly significant to place deliberations on the topic of religious/spiritual self-determination in the broader context of reflection on the Doctrine of Christian Discovery. Colonialism is characterized by a presumption of Euro-superiority in matters of law, culture and indeed spirituality. This arrogance and idolatry created blindness and deafness to the presence of God’s truth in Indigenous culture and expressions of prayer and spirituality. As such the Euro-dominant church in North America has oppressed contextual Christian Indigenous expressions of faith and spirituality and has not, therefore, enjoyed the promise of living in full unity as imagebearers of God in the body of Christ, as people “from every nation, tribe, people and language.”

Article 14.3: Rights to education in Indigenous languages are particularly important given the TRC’s findings of cultural genocide. The residential schools deliberately suppressed Indigenous languages as a means to assimilate Indigenous peoples. In far too many cases in Canada Indigenous languages are now under threat and in danger of extinction. Language and cultural identity are deeply linked so immersion education is one means to protect threatened languages and enhance cultural identity.

Article 20: This article extends the principles of self-determination to political, economic and social institutions; and to traditional subsistence activities. In Canada this right is expressed in treaty based hunting and fishing rights that have been the subject of prominent litigation in recent history (Donald Marshall fishing rights case). Honouring these rights is an element of respecting the special Indigenous relationship with the land (as expressed in the *New Covenant*).

Article 26: This right to lands traditionally used and occupied is most certainly echoed in land rights litigation and treaty negotiation in Canada. *Tsilhqot’in Nation v British Columbia* (Supreme Court of Canada 2014) was a case relevant to this right in that it affirmed *Tsilhqot’in* title by virtue of historic use and occupation. This is a significant precedent.

E. What does the UNDRIP contribute to CRCNA work?

The Centre for Public Dialogue regards UNDRIP as a helpful ground for respectful and constructive conversation with our Indigenous partners. In November 2010 Canada formally endorsed UNDRIP. Assembly of First Nations National Chief of that day, Shawn Atleo, was pleased with the endorsement and stated that a first priority for implementation of the *Declaration* was Indigenous education reform. Atleo’s statement at that time, and subsequent conversation with Indigenous leaders were the catalysts for the Centre for Public Dialogue decision to engage in research, advocacy and public witness for Indigenous control of Indigenous education. UNDRIP principles of self-determination and consultation have figured prominently in that work. The current Federal Government has made a specific commitment to implement the TRC Calls to Action *starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples*. Therefore, we expect that any of our efforts toward public witness and public dialogue on Indigenous issues in the current Parliament will need to include a thorough grounding in UNDRIP.

CRCNA partner KAIROS has been a key participant in the *Ad hoc Coalition on the United Nations Declaration on the Rights of Indigenous People*. With the clear Indigenous leadership of their Indigenous



Rights circle, Kairos has been a national leader in education and analysis on UNDRIP to the extent that it is a regular topic of dialogue and deliberation in ecumenical justice work. This means that the UNDRIP has impact in most, if not all, contemporary ecumenical dialogue on Indigenous rights. CRCNA efforts in education, mobilization and advocacy can build on this helpful ecumenical trend and expression of Indigenous leadership.

F. Communications and education planning – *and ecumenical collaboration:*

The Declaration is not well-known or understood in our communities. So at a pragmatic level, any endorsement of the TRC Call To Action #48 must include an ongoing educational and communications component. There is deep continuity between the wide range of work done throughout the TRC process, the longer history of CRC work and statements on Indigenous rights and the principles of the Declaration. Therefore, a communications/education strategy and any formal endorsement of the Declaration can proceed in the knowledge that the principles of the Declaration are not new to the CRC. A broad range of churches discussed follow-up on the TRC Calls to Action, including UNDRIP endorsement, in November 2015. Plans are still in development but we expect that there will be opportunities for shared communication and education efforts on UNDRIP up to, and following the March 31 deadline. We are particularly excited about a budding conversation with colleagues at the Mennonite Church Canada: there are some remarkable similarities in our churches on issues of Indigenous Justice so we are in early discussions about developing shared resources (blog articles, Biblical reflections etc.) intended to generate congregational conversation and understanding of UNDRIP. We will share details of these communications and ecumenical plans as they develop.

G. Deliberative process:

Both the Canadian Aboriginal Ministries Committee and the Committee for Contact with Government have followed the TRC process with great interest and believe that follow-up is urgent. Both Committees have reviewed drafts of the *Response to Call to Action #48* and contributed to its development. They are unanimous in bringing this statement forward for the action of the CRCNA Canada Corporation.

