Court File Nos. A-56-14, A- 59-14, A-63-14, A-64-14,
A-67-14, A-437-14, A-439-14, A-440-14,
A-442-14, A-443-14, A-445-14, A-446-14,
A-447-14, A-448-14, A-514-14, A-517-14,
A-520-14, A-522-14

FEDERAL COURT OF APPEAL

BETWEEN:

GITXAALA NATION, GITGA'AT FIRST NATION, HAISLA NATION, THE COUNCIL OF THE HAIDA NATION and PETER LANTIN suing on his own behalf and on behalf of all the citizens of the Haida Nation, KITASOO XAI'XAIS BAND COUNCIL on behalf of all members of the Kitasoo Xai'Xais Nation and HEILTSUK TRIBAL COUNCIL on behalf of all members of the Heiltsuk Nation, MARTIN LOUIE, on his own behalf, and on behalf of Nadleh Whut'en and on behalf of the Nadleh Whut'en Band, FRED SAM, on his own behalf, on behalf of all Nak'azdli Whut'en, and on behalf of the Nak'azdli Band, UNIFOR, FORESTETHICS ADVOCACY ASSOCIATION, LIVING OCEANS SOCIETY, RAINCOAST CONSERVATION FOUNDATION, FEDERATION OF BRITISH COLUMBIA NATURALISTS carrying on business as BC NATURE

Applicants and appellants

-and-

HER MAJESTY THE QUEEN, ATTORNEY GENERAL OF CANADA, MINISTER OF THE ENVIRONMENT, NORTHERN GATEWAY PIPELINES INC., NORTHERN GATEWAY PIPELINES LIMITED PARTNERSHIP and NATIONAL ENERGY BOARD

Respondents

-and-

THE ATTORNEY GENERAL OF BRITISH COLUMBIA, AMNESTY INTERNATIONAL and THE CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS

Interveners

FACTUM OF THE INTERVENER, AMNESTY INTERNATIONAL

May 22, 2015

STOCKWOODS LLP
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1
Justin Safayeni (58427U)
Naomi Greckol-Herlich (64405D)
Tel: 416-593-3494
FAX: 416-593-9345

SACK GOLDBLATT MITCHELL LLP
500-30 Metcalfe St.
Ottawa, ON
K1P 5L4
Colleen Bauman (53347J)
Tel: (613) 482-2463
FAX: (613) 235-3041

Counsel for the Intervener, Amnesty International

TO: **Federal Court of Appeal**
Calgary Local Office
Canadian Occidental Tower
635 Eighth Avenue S.W.
3rd Floor, P.O. Box 14
Calgary, Alberta T2P 3M3
Attention: Judicial Administrator

AND TO: **Counsel for the Applicant Haisla Nation**
Donovan & Company
6th Floor, 73 Water Street
Vancouver, British Columbia V6B 1A1
T: (604) 688-4272
F: (604) 688-4282
E: Allan_Donovan@aboriginal-law.com
Jennifer_griffith@aboriginal-law.com;
AmyJo_Scherman@aboriginal-law.com
Counsel: Allan Donovan, Jennifer Griffith and AmyJo Scherman

AND TO: **Counsel for the Applicant Gitxaala Nation**
Janes Freedman Kyle Law Corporation
340 – 1122 Mainland Street
Vancouver, British Columbia V6B 5L1
T: (604) 687-0549 ext. 101
F: (604) 687-2696
E: rjanes@jfklaw.ca; esigurdson@jfklaw.ca
Counsel: Robert Janes and Erin Sigurdson

AND TO: **Counsel for the Applicant Gitga'at Frist Nation**
1500 – 885 West Georgia Street
Vancouver, British Columbia V6C 3E8
T: (604) 601 2083
F: (604) 683-8125
E: ross@michaelleeross.com; gjacksonlaw@shaw.ca
Counsel: Michael Lee Ross and Grace Jackson

AND TO: **Counsel for Kitasoo Xai'Xais Band Council and Heiltsuk Tribal Council**
Ng Ariss Fong, Lawyers
210 – 900 Howe Street, Box 160
Vancouver, British Columbia V6Z 2M4
T: (604) 331-1155
F: (604) 677-5410
E: lisa@ngariss.com; lisa@ngariss.org; julia@ngariss.com; julia@ngariss.org
Counsel: Lisa Fong

AND TO: **Counsel for the Applicants Martin Louie, Fred Sam, Nak'azdli and Nadleh Whut'en First Nations**
Mandell Pinder
Reception Suite 300
Vancouver, British Columbia V6B 2T4
T: (604) 681-4146
F: (604) 681-0959
E: cheryl@mandellpinder.com; gavin_smith @wcel.org; jessica_clogg@wcel.org
Counsel: Chery Sharvit, Gavin Smith, Jessica Clogg

AND TO: **Counsel for the Applicant Peter Lantin and Council of the Haida Nation**
White Raven Law Corporation
16541 Upper Beach Road
Surrey, British Columbia V3Z 9R6
T: (604) 536-5541
F: (604) 536-5542
E: tlwd@whiteravenlaw.ca; sredmond@whiteravenlaw.ca; ebulbrook@whiteravenlaw.ca; justice@mjacksonlaw.ca; david.paterson@patersonlaw.ca
Counsel: Terri-Lynn William-Davison

AND TO: **Counsel for the Applicants ForestEthics Advocacy Association et al**
Ecojustice
1000 – 5th Avenue SW, Suite 900
Calgary, AB T2P 4V1
T: (403) 705-0202
F: (403) 264-8399
E: brobinson@ecojustice.ca; kcampbell@ecojustice.ca
Counsel: Barry Robinson and Karen Campbell

AND TO: **Counsel for the Applicant BC Nature**
Environmental Law Centre
University of Victoria, Faculty of Law
Murray and Anne Fraser Building Room 102
McGill Road at Ring Road
Victoria, British Columbia V8P 5C2
T: (250) 888-6074
F: (250) 472-4528
E: ctollef@uvic.ca; anho@uvic.ca; ELC.ArticledStudent@uvic.ca
Counsel: Chris Tollefson

AND TO: **Counsel for the Applicant/Appellant Unifor**
Sack Goldblatt Mitchell LLP
30 Metcalfe St. , Suite 500
Ottawa, Ontario K1P 5L4
T: (613) 482-2456
F: (613) 235-3041
E: sshrybman@sgmlaw.com; bpiper@sgmlaw.com
Counsel: Steven Shrybman, Ben Piper

AND TO: **Counsel for the Respondent Attorney General of Canada**
Department of Justice Canada, BC Regional Office
900 – 840 Howe Street
Vancouver, British Columbia V6Z 2S9
T: (604) 666-0110
F: (604) 666-1585
E: jan.brongers@justice.gc.ca; dayna.anderson@justice.gc.ca;
ken.manning@justice.gc.ca; catherine.douglas@justice.gc.ca
Counsel: Jan Brongers, Dayna Anderson, Ken Manning and Catherine Douglas

AND TO: **Counsel for the Respondents, Northern Gateway Pipelines Inc. and Northern Gateway Pipelines Limited Partnership**
Denton s Canada LLP
15th Floor, Bankers Court
850 – 2nd Street SW
T: (403) 268-7023
F: (403) 268-3100
E: Richard.neufeld@dentons.com; laura.estep@dentons.com;
bernard.roth@dentons.com
Attention: Richard A. Neufeld, Q.C., Laura Estep and Bernard Roth

AND TO: **Counsel for the Respondent National Energy Board**
510 – 10th Avenue SW
Calgary, Alberta T3R 0A8
T: (403) 292-6540
F: (403) 292-5503
E: Andrew.hudson@neb-one.gc.ca; isabelle.cadotte@neb-one.ca
Counsel: Andrew Hudson and Isabelle Cadotte

AND TO: **Counsel for the Intervener Attorney General of British Columbia**
Ministry of Justice
Aboriginal Law and Litigation Group
3rd Floor, 1405 Douglas Street
PO Box 9270, Stn Prov Govt
Victoria, British Columbia V8W 9J5
T: (250) 387-2890
F: (250) 387-0343
E: angela.cousins@gov.bc.ca
Counsel: Angela Cousins

AND TO: **Counsel for Intervener, The Canadian Association of Petroleum Producers**
Lawson Lundell LLP
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia V6C 3L2
T: (604) 685-3456
F: (604) 669-1620
E: lmanning@lawsonlundell.com; kbergner@lawsonlundell.com; tkruger@lawsonlundell.com
Counsel: Keith Bergner

TABLE OF CONTENTS

FACTUM OF THE INTERVENER, AMNESTY INTERNATIONAL

PART I - OVERVIEW - NATURE OF CASE AND ISSUES

1. This case involves a number of applications for judicial review and statutory appeals, challenging decisions made by the National Energy Board, the Governor in Council and the Joint Review Panel (the "JRP") concerning the Northern Gateway Pipeline Project (jointly the "decisions under review"), which have been consolidated by court order.[1]

2. International law is relevant in determining two key issues before this Court: (i) whether the decisions under review are reasonable or correct, given their interpretation and application of the *Canadian Environmental Assessment Act, 2012* ("*CEAA*")[2]; and (ii) whether Canada has met its constitutional duty to consult with and accommodate affected Indigenous peoples.

3. International law requires a high standard of protection for the Indigenous rights engaged by the decisions under review. Accordingly, the specific factors set out in the *CEAA* and the precautionary principle that informs the JRP's mandate must be interpreted to reflect an acute awareness of the need to protect Indigenous peoples' substantive rights, and the inherent seriousness of any damage to these rights, particularly given previous harm inflicted on Indigenous peoples and their heightened vulnerability to further harm.

4. The constitutional duty to consult must also be interpreted in light of Canada's international obligations to ensure the effective and meaningful participation of Indigenous peoples in decisions potentially affecting their rights. These obligations include protecting and accommodating Indigenous institutions and traditional systems of decision-making; making genuine, good faith efforts to reach a mutual agreement with the aim of protecting the human rights of Indigenous peoples; and, where the potential for harm from a proposed project is significant, obtaining the free, prior, and informed consent of the affected Indigenous peoples.

---

[1] Order of Stratas J. dated December 17, 2014. See the detailed "Agreed Statement of Facts" for a detailed statement of the complex leading proceedings by the multiple parties leading to the present case.

[2] *Canadian Environmental Assessment Act, 2012,* SC 2012, c 19, s 52 ["the *CEAA*"]

PART II - QUESTIONS IN ISSUE

5. Amnesty International's ("AI") intervention is limited to the relevance and application of international law to the issues of the correctness or reasonableness of the decisions under review, and whether or not the constitutional duty to consult and accommodate has been met in the present case.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

A. CANADA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND COMMITMENTS ARE RELEVANT TO THE ISSUES BEFORE THIS COURT

6. International law plays a critical role in assessing the reasonableness or correctness of how the *CEAA* was applied in the decisions under review and in interpreting Canada's constitutional duty to meaningfully consult with and accommodate affected Indigenous peoples in this case. The relevance of international law stems from general principles of statutory interpretation, the role of international law in constitutional interpretation, the honour of the Crown, and the congruency between Canada's international obligations and its domestic rights framework.

(i) Statutory Interpretation Principles Support Consideration of International Law

7. Any interpretation of the *CEAA* or the constitutional duty to consult that is inconsistent with international law should be rejected. At a basic but fundamental level, "since Canada ... is a participant in the international community and supports international rule of law, it is appropriate to read domestic legislation in light of international law."[3] Accordingly, courts have recognized that all domestic statutes should be interpreted consistently with and reflect the "values and principles of customary and conventional international law," unless there is a clear, unequivocal legislative intent to the contrary.[4] International law also informs the contextual approach to statutory interpretation more broadly, and favours an interpretation that is consistent with and

---

[3] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham, ON: LexisNexis Canada, 2008) at 548 [Sullivan].

[4] *R v Hape*, 2007 SCC 26 at para 53, [2007] 2 SCR 292 [*Hape*]; *Baker v Canada*, [1999] 2 SCR 817 at para 70, 174 DLR (4th) 193 [*Baker*].

more fully accords with Canada's international obligations, even where alternative interpretations may not explicitly default on such obligations.[5]

(ii) International Law Circumscribes the Discretion Exercised by the JRP

8. While the JRP may enjoy a degree of discretion in interpreting and applying the *CEAA*, this discretion must be exercised in accordance with Canada's international legal obligations in order to be reasonable. A grant of discretion is never boundless. Decisions made pursuant to a grant of statutory authority must still fall along the spectrum of acceptable and defensible possible outcomes.[6] The range of acceptable and defensible options depends on the nature of the question and the circumstances of the case.[7] In some cases, the range may be narrow and constrained so that there may only be a single "reasonable" way to exercise discretion.[8] Amnesty International submits that where issues of international law are engaged, the range of acceptable outcomes is narrowed such that administrative tribunals cannot exercise their discretion in a manner inconsistent with Canada's international obligations.[9]

(iii) International Law is Relevant to Interpreting the Constitution

9. International law also plays an important role in interpreting constitutional rights. Given that the duty to consult with Aboriginal peoples is grounded in the "promise of rights recognition" enshrined in s. 35 of the *Constitution Act, 1982* (the "Constitution"),[10] Canada's international

---

[5] See Sullivan, *supra* note 3 at 539; *Canada (Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445 at para 354-355, aff'd 2013 FCA 75, 215 ACWS (3d) 439; *Rahaman v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 89 at para 35, [2002] 3 FCR 537.

[6] *Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha*, 2014 FCA 56 at para 88, 238 ACWS (3d) 282 [*Farwaha*].

[7] *Ibid* at para 88.

[8] *Attaran v Canada (Attorney General)*, 2015 FCA 37 at para 49, 380 DLR (4th) 737.

[9] *Baker, supra* note 4 at paras 65-67, 75. See also Gib Van Ert, *Using International Law in Canadian Courts*, 2nd ed (Toronto: Irwin Law, 2008) at 79: "If the legislature did not intend to violate international law, it surely cannot have intended to delegate the power to do so to administrative decision-makers exercising statutory discretion. Conformity with international law is therefore rightly regarded as an implicit limit on the powers of administrative decision-makers in most cases." See also *Core Document forming part of the Reports of States Parties,* UN Doc HRI/CORE/CAN/2013 (30 May 2013) at para 122: "It is not the practice in Canada for one single piece of legislation to be enacted incorporating an entire convention on human rights into domestic law [...] Rather, many different federal, provincial and territorial laws and policies together serve to implement Canada's international human rights obligations."

[10] *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK),* 1982, c 11, s 35; *Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73 at para 20, [2004] 3 SCR 511 [*Haida*].

obligations regarding meaningful consultation with and participation by Indigenous peoples in decisions potentially affecting their rights are of particular relevance in helping to understand the scope and meaning of the duty to consult in this case. This argument regarding the importance of international law to constitutional interpretation also applies to the interpretation of the *CEAA*.[11]

10. In interpreting constitutional rights, the Supreme Court of Canada ("SCC") has long recognized international legal principles as a "relevant and persuasive" source of law, and has drawn upon binding treaties, customary international law, declarations, the reports of UN Special Rapporteurs, foreign and international jurisprudence, and pronouncements of various human rights bodies.[12] Notably the SCC has "sought to ensure consistency between its interpretation of the [*Canadian Charter of Rights and Freedoms* ("*Charter*")] [...] and Canada's international obligations and relevant principles of international law"[13] and has held that the "*Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified."[14]

11. In the same way the SCC has relied upon international law to assist in interpreting *Charter* rights, international law should serve as a basis for interpreting other constitutional rights, and in particular Aboriginal rights. Aboriginal rights under s. 35 are similar in many respects to *Charter* rights. Like *Charter* rights, s. 35 rights, including Indigenous land and other collective rights, are fundamental human rights. Like *Charter* rights, s. 35 rights find expression and protection in a number of human rights treaties to which Canada is a party.[15] And, like the rights under the

---

[11] The Supreme Court of Canada has determined that the specific mandates of administrative agencies must be interpreted and applied consistently with the Canadian Constitution, including the constitutional obligation to uphold the honour of the Crown, respect potential and recognized Aboriginal rights, and fulfill the duty to consult and accommodate. See *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 45, [2010] 3 SCR 103 [*Beckman*].

[12] *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at 348, 38 DLR (4th) 161, Dickson CJ, dissenting on other grounds; *United States v Burns*, 2001 SCC 7 at paras 80, 85-89, [2001] 1 SCR 283; *Health Services and Support -- Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at paras 70, 75, 76, 78, [2007] 2 SCR 391 [*Health Services*]; *Hape, supra* note 4 at paras 35-39, 53-56; *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at paras 22-28, [2013] 2 SCR 157 [*Divito*]; *R v Sharpe*, 2001 SCC 2 at paras 175, 178, [2001] 1 SCR 45.

[13] *Hape, supra* note 4 at para 55.

[14] *Health Services, supra* note 12 at para 69; *Divito, supra* note 12 at para 23, cited with approval in *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at para 64, 380 DLR (4th) 577.

[15] See for example, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195 [*ICERD*], *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966,

Charter and other human rights legislation, s. 35 rights should receive "large, liberal and purposive interpretations" with any "doubt or ambiguities" resolved in favour of Aboriginal peoples.[16]

(iv) The Honour of the Crown Entails Respect for Canada's International Obligations

12. The duty to consult is also grounded in the honour of the Crown, a constitutional principle.[17] This principle requires the Crown to "act honourably, in accordance with its historical and future relationship with the Aboriginal peoples in question" in all its dealing with Aboriginal peoples.[18] The honour of the Crown "is not a mere incantation, but rather a core precept that finds its application in concrete practices" and "must be understood generously in order to reflect the underlying realities from which it stems."[19]

13. In light of its far-reaching importance to all dealings between the Crown and Aboriginal peoples, the honour of Crown requires the government to respect not only its domestic legal obligations towards Aboriginal peoples, but also its corresponding international legal obligations towards them. For surely it would be inconsistent with the honour of the Crown to allow Canada to ignore or act in a manner that is inconsistent with its promises to Aboriginal peoples in any arena, including on the international stage.

(v) Canada's International Obligations and Domestic Rights Framework are Interlinked and Complementary

14. Canada's international obligations towards Indigenous peoples in many ways mirror the Canadian common law and constitutional framework for Aboriginal rights protection. As stated by

---

993 UNTS 3 [*ICESR*]; *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171[*ICCPR*].

[16] Sullivan, *supra* note 3 at 498, 509; See also *R v Sparrow*, [1990] 1 SCR 1075 at 1106, 70 DLR (4th) 385; *Hunter v Southam Inc*, [1984] 2 SCR 145 at 156-157, 11 DLR (4th) 641.

[17] *Haida, supra* note 10 at paras 16 and 20; *Manitoba Métis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 69, [2013] 1 SCR 623 [*Métis*]; *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at paras 31-39, [2010] 2 SCR 650.

[18] *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74 at para 24, [2004] 3 SCR 550, *Metis, supra* note 17at paras 75, 77.

[19] *Haida, supra* note 10 at paras 16- 18; *Metis, supra* note 17 at para 73.

the UN General Assembly, "human rights, the rule of law and democracy are interlinked and mutually reinforcing."[20] This interlinking was also recognized by Chief Justice McLachlin:

> Aboriginal rights from the beginning have been shaped by international concepts [...] More recently, emerging international norms have guided governments and courts grappling with aboriginal issues. Canada, as a respected member of the international community, cannot ignore these new international norms [...] Whether we like it or not, aboriginal rights are an international matter.[21]

15. In light of their recognized importance as a source for interpreting domestic law and the Constitution, Canada's international obligations and commitments must be considered when interpreting and applying the *CEAA,* in assessing the correctness or reasonableness of how the relevant statutory provisions were applied, and in examining the scope and meaning of the constitutional duty to consult in the circumstances of this case.

B. DECISIONS UNDER REVIEW MUST RESPECT THE HIGH STANDARD OF PROTECTION REQUIRED UNDER INTERNATIONAL LAW

16. The Indigenous rights engaged by the decisions under review require a high standard of protection under international law. According to several parties in this proceeding, those rights include various Indigenous rights relating to land ownership and title, resource use (including hunting and fishing rights), the maintenance of Indigenous governance institutions and traditions, and the exercise and protection of cultural heritage and practices.[22]

17. The duty to respect and protect Indigenous peoples' land and resource rights is codified in the *UN Declaration on the Rights of Indigenous Peoples*[23] ("*UN Declaration*"), which Canada has

---

[20] United Nations General Assembly, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, 67th Sess, UN Doc A/RES/67/1 (24 September 2012) at para 5.

[21] Right Honourable Beverley McLachlin, Chief Justice of Canada, "Aboriginal Rights: International Perspectives" (Speech delivered at the Order of Canada Luncheon, Canadian Club of Vancouver, Vancouver, British Columbia, 8 February 2002) at p. 2..

[22] See Notice of Application, *Gitxaala Nation v Canada*, File A-64-14 at paras 31, 36; Notice of Motion, *Haisla Nation v Canada*, File 14-A-51 at para 20; Notice of Application, *Kitasoo Xai'Xais v Canada*, at paras 63-66; and Notice of Motion, *Martin Louie, on behalf of all Nadleh Whut'en v Canada*, File 14-A-48 at paras 38, 43; See Notice of Application, *Gitxaala Nation v Canada*, File A-64-14 at para 38; Notice of Motion, *Haisla Nation v Canada*, File 14-A-51 at para 20; and Notice of Motion, *Martin Louie, on behalf of all Nadleh Whut'en v. Canada*, File 14-A-48 at paras 40-42; See Notice of Application, *Gitxaala Nation v. Canada*, File A-64-14 at paras. 20, 33-35.

[23] *United Nations Declaration on the Rights of Indigenous Peoples*, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2 October 2007), arts 8(2)(b), 25-28 [*UN Declaration*].

endorsed and Canadian courts have recognized as a relevant source of international law.[24] The duty is also recognized under Article 27 of the *International Covenant on Civil and Political Rights*[25] ("*ICCPR*"), Article 15 of the *International Covenant on Social, Economic and Cultural Rights*,[26] the *Convention on the Elimination of All Forms of Racial Discrimination*,[27] and as part of customary international law,[28] which is automatically incorporated into Canadian common law.[29]

18. For Indigenous peoples, secure access to and control over their traditional territories and the resources of those territories is an essential precondition for the enjoyment of other protected human rights and the very survival of Indigenous peoples.[30] These rights include the rights to life, health, subsistence, livelihood, a healthy environment and drinkable water.[31]

19. Indigenous peoples' cultural rights – including rights to practice and pass on to future generations their unique languages, customs, and traditions, and to maintain their societal institutions and structures – are also protected under the *UN Declaration,* the *ICCPR,* and the *ICESCR*.[32] These rights are of "central significance" not only because they help define the

---

[24] *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2012 FC 445, aff'd 2013 FCA 75, at paras 353-354, 215 ACWS (3d) 439. The Government of Canada has also recognized that the *UN Declaration* is a relevant source when interpreting the *Charter:* Committee on the Elimination of Racial Discrimination, *Nineteenth and twentieth reports of Canada*, 18th Sess, UN Doc CERD/C/SR.2142 (March 2012) at para 39.

[25] United Nations Human Rights Committee, *General Comment No 23: Article 27,* 50th Sess, UN Doc HRI/GEN/1/Rev.1 (1994) at para 7.

[26] United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, 43rd Sess, UN Doc E/C.12/GC/21 at para 36 [*General Comment 21*].

[27] Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, 51st Sess, UN Doc A/52/18, annex V at 122 (1997) at para 5 [*General Recommendation 23*].

[28] *Aurelio Cal v Attorney General of Belize*, 18 Oct 2007, Supreme Court of Belize, Judgment at para 127; *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua*, (2001) Judgment, Inter-Am Ct HR (Ser C) No 79 at para 140(d) [*Mayagna*]; S. James Anaya, "International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State" 21:1 Ariz J Int'l & Comp L 13 at 47 [Anaya, 2004]

[29] *Hape, supra* note 4 at para 39.

[30] International Law Association, *The Hague Conference: Rights of Indigenous Peoples* (2010) at 47, online: <http://www.ila-hq.org/en/committees/index.cfm/cid/1024 >; See also United Nations Human Rights Committee, *Communication No 1457/2006: Ángela Poma Poma v Peru*, 95th Sess, UN Doc CCPR/C/95/D/14572006 (27 March 2009) at para 7.2.

[31] United Nations Committee on Social, Economic and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd Sess, UN Doc E/C.12/2000/4 (11 August 2000) at para 27.

[32] See *UN Declaration*, *supra* note 23, arts. 8, 11, 15, 31 and *ICESCR supra* note 23, arts 1, 15; *ICCPR supra* note 15, art 27.

identities of Indigenous peoples, but also because they "almost by definition embody the corollary rights to non-discrimination and, especially, to self-determination."[33] These cultural rights are tied closely to Indigenous peoples' right to the lands, territories, and resources traditionally owned, occupied, or otherwise used or acquired. These rights and cultural values must be respected and protected, so as to prevent the loss of Indigenous cultural identity.[34]

20. The fact that the extent and nature of the Indigenous rights in question are disputed by the State, or that the State has not fully recognized pre-existing Indigenous rights in its own laws and procedures, does not negate the existence of these rights, justify their violation, or attenuate the degree of protection required.[35] Indeed, a failure to adequately protect asserted rights pending formal recognition risks compounding past injustices or perpetuating a double standard in access to justice that would be considered a form of racial discrimination.[36]

21. The high standard of protection can also be seen in the fact that international law requires strict justification for any conduct that will negatively impact human rights.[37] This includes the rights of Indigenous peoples outlined above. Given the vital importance of Indigenous rights, and the high risk of their violation, international law requires that a strict precautionary approach "guide decision-making about any measures that may affect rights over lands and resources and other rights that are instrumental to the survival of indigenous peoples."[38] Accordingly,

---

[33] See United Nations General Assembly, *Rights of indigenous peoples, including their economic, social and cultural rights in the post-2015 development framework*, 69th Sess, UN Doc A/69/267 (6 Aug 2014) at para 20. See also *General Comment 21, supra* note 26 at paras 16(e), 36-37; *General Recommendation 23, supra* note 27 at paras 4-5.

[34] *General Comment 21, supra* note 26 at para 36.

[35] *Mary and Carrie Dann v United States*, (2002), Inter-Am Comm HR, Case 11.140, Report No 75/02, doc 5 rev 1 at para 130 [*Mary and Carrie Dann*].

[36] *Maya Indigenous Communities of the Toledo District (Belize)* (2004), Inter-Am Comm HR, No 40/04, Case 12.053 at para 167.

[37] UN Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, 80th Sess, UN Doc CCPR/C/21/Rev.1/Add.31 (26 May 2004) at para 6; "States must demonstrate [the necessity of restrictions] and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.; *UN Declaration, supra* note 23, art 46(2): The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are ... in accordance with international human rights obligations ... 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.

[38] United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, 21st Sess, UN Doc A/HRC/21/47 (6 July 2012) at para 52 [Anaya, 2012].

international law does not view assertions of economic or financial advantage as sufficient justification for infringing rights.[39] As the Committee on the Elimination of Racial Discrimination put it, "development objectives are no justification for encroachments on human rights[.]"[40]

22. This high standard of protection for Indigenous rights is appropriate and necessary, particularly given the unresolved legacy of past violations and current inequalities faced by Indigenous peoples in Canada. The Special Rapporteur on the Rights of Indigenous Peoples referred to these inequalities in Canada as a "continuing crisis".[41] International law has repeatedly recognized that the history of dispossession and continued discrimination experienced by Indigenous peoples, and historic patterns of decision-making that have excluded Indigenous legal traditions, must be taken into account when dealing with issues affecting Indigenous rights.[42]

C. DECISIONS UNDER REVIEW MUST BE CONSISTENT WITH INTERNATIONAL LAW IN ORDER TO BE CORRECT OR REASONABLE

(i) Assessing Potential Adverse Effects

23. The high standard of protection must be taken into account in reviewing the interpretation and application of the factors set out in the *CEAA*. In particular, it is relevant to assessing:

a. the significance of the project's "environmental effects" (s. 19(1)(b))[43];

b. the "cumulative environmental effects" likely to result from the project (s. 19(1)(a));

c. the adequacy of "mitigation measures" to address such effects (s. 19(1)(d)); and

d. whether, and to what extent, "Aboriginal traditional knowledge" ought to be taken into account (s. 19(3)).

---

[39] *Case of the Yakye Axa Indigenous Community v Paraguay* (2005) Judgment, Inter-Am Ct HR (Ser C) No 125 at paras 144, 146.

[40] United Nations General Assembly, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*, 64th Sess, UN Doc CERD/C/64/CO/9/Rev.2 (12 March 2004) at para 15.

[41] UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, 27th Sess, UN Doc A/HRC//27/52/Add.2 (4 July 2014) at para 80 [Anaya, 2014].

[42] *UN Declaration*, *supra* note 23, preamble, art 21(2); *Mary and Carrie Dann, supra* note 35 at para 125; UN Human Rights Committee, *Lubicon Lake Band v Canada, Communication No. 167/1984*, UN Doc A/45/40/Supp 40 (26 March 1990) at para 33.

[43] These are defined to include effects on Aboriginal peoples': "health and socio-economic conditions, their physical and cultural heritage, their use of lands and resources for traditional purposes, and on any of their structures, sites or things that are of historical, archaeological, paleontological or architectural significance (s. 5(1)(c))."

24. The high standard of protection is also relevant to determining how the "precautionary principle", which the JRP is required to apply (s. 4(2)), ought to be interpreted.[44] The principle mandates that environmental policies must anticipate, prevent and attack the causes of environmental degradation.[45] Lack of conclusive scientific evidence shall not dissuade states from implementing measures to protect against possible environmental harms.[46]

25. To be consistent with the high standard of protection under international law, the factors set out in the *CEAA*, and the precautionary principle that the JRP must apply, all must be interpreted to reflect an acute awareness that Indigenous peoples have substantive rights that must be protected, and recognize the inherent seriousness of any damage to these rights, particularly given previous harm inflicted on Indigenous peoples and the heightened vulnerability to harm that has resulted.[47] Arguments, assurances, and evidence offered in favour of a project must be rigorously scrutinized. Threats to Indigenous peoples' land, resource, and cultural rights must be accorded significant weight.[48] Uncertainty about the rights in question cannot justify a lesser degree of caution in assessing the potential risks. Adopting a more relaxed approach fails to afford Indigenous rights the required standard of protection, and is inconsistent with Canada's international obligations.

26. The Report of the JRP (*Connections: Report of the Joint Review Panel for the Enbridge Northern Gateway Project* – henceforth "JRP Report") does not reflect an interpretation and application of the *CEAA* that is consistent with the standard of protection required under international law. On this basis alone, the resulting decision is both unreasonable and incorrect.

---

[44] Several parties challenge the JRP's interpretation and application of this principle: see Notice of Application, *Gitxaala Nation v Canada*, File A-64-14 at para 57, 77-79; Notice of Motion, *Haisla Nation v Canada*, File 14-A-51 at para 21; and Notice of Application, *Gitga'at First Nation v Canada*, File A-67-14 at paras 6, 41.

[45] *114957 Canada Ltée (Spray-Tech, Société d'arrosage) v Hudson (Ville)*, 2001 SCC 40 at para 31, [2001] 2 SCR 241.

[46] United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, (June 14, 1992) principle 15 online: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>; the *Rio Declaration* was recognized as a persuasive articulation of international environmental law by the SCC in *Imperial Oil Ltd v Quebec (Minister of the Environment)*, 2003 SCC 58 at para 23, [2003] 2 SCR 624.

[47] The Inter-American Court, for example, has said that the social and environmental impact assessment of resource development projects on the lands of Indigenous peoples, "must conform to the relevant international standards and best practices." *Case of the Saramaka People v Suriname* (2007), Judgment, Inter-Am Ct HR (Ser C) No 172 at para 41 [*Saramaka People*].

[48] *Baker, supra* note 4 at para 65-67

27. For example, although the JRP Report clearly acknowledges the voluminous nature of the evidence before it[49], and frequently recites the positions presented by Indigenous groups, it rarely explains why the evidence given by Northern Gateway was preferred over the detailed evidence (including expert evidence) given by affected Indigenous groups and communities.[50] In some instances, the JRP Report even prefers the evidence offered by Northern Gateway as to the potential effects of the project on the Indigenous communities over the evidence of the communities themselves, with no explanation as to why. This not only flies in the face of general administrative law principles, but is also inconsistent with the JRP's own policy on reconciling Aboriginal traditional knowledge and western knowledge.[51]

(ii) Assessing the Public Interest

28. Part of the JRP's mandate was to assess whether the project was in the public interest. The public interest is not limited to economic matters or financial benefits. Even where the financial benefit of a project can be objectively shown, such a project is not automatically in the public interest. In this case, the decisions under review will inevitably impact the larger, overarching public interest of achieving reconciliation with Indigenous peoples,[52] which cannot occur without a proper respect for human rights, in accordance with international law.[53] Accordingly, public interest should not be understood to exclude Indigenous peoples or assume an adversarial relationship between Indigenous and non-Indigenous interests. Advancing the goal of genuine reconciliation between Indigenous and non-Indigenous peoples is a crucial aspect of the public interest, and benefits all Canadians. Compliance with Canada's international human rights obligations is also in the public interest, similarly benefits all Canadians, and advances the goal of reconciliation.

---

[49] JRP Report Volume 1: Connections, December 19, 2013, at 15, Basic Common Book of Documents, Vo 1 Tab 20.

[50] See, e.g. *ibid,* s 2.4.1 at 21.

[51] See *ibid,* ss 2.5, 2.5.5 at 22-23, 25. See Canadian Environmental Assessment Agency, "Considering Aboriginal traditional knowledge in environmental assessments conducted under the *Canadian Environmental Assessment Act – Interim Principles*" (13 March 2013) online < https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=4A795E76-1>.

[52] *Beckman, supra* note 11at para 10.

[53] See, e.g. Anaya, 2014, *supra* note 41 at para 71.

D. CANADA'S DUTY TO CONSULT MUST ACCORD WITH INTERNATIONAL OBLIGATIONS TO ENSURE THE EFFECTIVE AND MEANINGFUL PARTICIPATION OF INDIGENOUS PEOPLES

29. AI submits that, consistent with the high standard of protection, Canada's international obligations entail ensuring the effective and meaningful participation of Indigenous peoples in decisions potentially affecting their rights. These obligations include ensuring a decision-making process that is consistent with Indigenous peoples' customs and traditions, making genuine, good faith efforts to reach a mutual agreement with the aim of protecting the human rights of Indigenous peoples; and, where the potential for harm from a proposed project is significant, obtaining the free, prior, and informed consent ("FPIC") of the affected Indigenous peoples.

(i) Meaningful Participation in Decision-Making Requires a Process that Enhances and is Consistent with Indigenous Peoples' Customs and Traditions

30. Flowing from the right of self-determination in international law[54] is the right of indigenous peoples to meaningfully participate in decision-making processes that potentially affect their rights and interests.[55] The obligation to ensure meaningful participation is also necessary to fulfill the high standard of protection required in all decisions potentially affecting Indigenous rights. Only through Indigenous peoples' involvement can the full range of potential harms be identified and their seriousness appropriately gauged."

31. The right to meaningfully participate in decision-making requires the state to collaborate with Indigenous peoples, including by actively consulting "according to their customs and traditions" and "through culturally appropriate procedures."[56] Such participation is to be

---

[54] *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI arts 1(2), 55; *ICCPR, supra,* note 15, arts 1, 27; *ICESCR, supra* note 15, art 1.

[55] See United Nations Human Rights Committee, *Apirana Muhuika et al v New Zealand, Communication No. 547/1993*, 55th Sess, UN Doc CCPR/C/70/D/547/1993 (27 October 2000) at para 9.5 [*Apirana*]: "The Committee recalls its general comment on article 27, according to which, especially in the case of indigenous peoples, the enjoyment of the right to one's own culture may require positive legal measures of protection by a State party and measures to ensure the effective participation of members of minority communities in decisions which affect them. In its case law under the Optional Protocol, the Committee has emphasised that the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit for their traditional economy."

[56] *Saramaka People, supra* note 47 at para 133.

conducted through representative institutions in a form appropriate to the circumstances.[57] "Representativeness" in turn requires the involvement of Indigenous peoples from the outset in the design and implementation of the process in order to ensure that Indigenous peoples determine the manner by which their representation is chosen and that the process is compatible with their customs and traditions.[58]

32. In most instances, soliciting comments from the general public will not on its own be sufficient to meet the international legal requirement that the decision-making process must respect Indigenous peoples' traditional means of decision-making. Given the diversity of Indigenous peoples, the model of decision-making is expected to vary according to varied customs and traditions. The Special Rapporteur on the Rights of Indigenous Peoples has expressed concern that Canada's current approach to consultation has fallen short of international standards, and "is contributing to an atmosphere of contentiousness and mistrust that is conducive neither to beneficial economic development nor social peace."[59]

(ii) Meaningful Consultation Requires a Good Faith Effort to Reach Agreement

33. While the degree of consultation required may vary depending on the nature of the proposed project, the scope of its impact, and the nature of the rights at stake,[60] the duty to consult requires something more substantial than merely the collection and consideration of the views of Indigenous peoples. The duty has been described as a "true instrument" of participation that allows Indigenous people to truly "influence the decision making process," and one that requires "genuine dialogue [...] aimed at reaching an agreement."[61] At a minimum, the duty to consult under international law requires making a genuine, good faith effort to reach a mutual agreement, and being open to the possibility that a project should be rejected.[62]

---

[57] *UN Declaration*, *supra* note 23, art 32.

[58] See Anaya, 2004, *supra* note 28 at 49-50.

[59] Anaya, 2014, *supra* note 41 at para 71.

[60] *Ibid* at para 65.

[61] *Case of the Kichwa Indigenous People of Sarayaku v Ecuador* (2012), Judgment, Inter-Am Ct HR (Ser C) No 245at paras 167, 186, 200 [*Kichwa*].

[62] Anaya, 2014, *supra* note 41 at para 76; United Nations General Assembly, *Report of the Special Rapporteur on the rights of indigenous peoples*, 66th Sess, UN Doc A/66/288 (10 August 2011) at para 85; United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous*

34. The obligation to consult Indigenous peoples on matters that may affect their rights and interests is a general principle of international law.[63] The adequacy of the consultation with Indigenous peoples and the outcomes of those consultations are crucial tests of whether resource extraction should be allowed to proceed on the lands of Indigenous peoples.[64]

(iii) Where the Potential for Harm is Significant, Free, Prior, and Informed Consent of the Affected Indigenous Peoples is Required

35. In situations where resource operations take place on the recognized or customary land of Indigenous peoples or impact areas of cultural significance or resources traditionally used by Indigenous peoples, and these interventions have the potential to deprive Indigenous peoples of "the capacity to use and enjoy their lands and other natural resources necessary for their subsistence,"[65] the FPIC of the Indigenous communities is presumptively required.[66]

36. FPIC, although not an absolute right, is subject to a purposive, case-by-case assessment of the circumstances of the affected peoples and the potential for serious harm to their rights. Such a determination must always be proportionate to the rights at stake and the potential for harm. Consistent with the principle of effective interim protection,[67] the FPIC standard is appropriate even when the exact scope of the Indigenous rights in question is still the subject of unresolved court cases or negotiations with the State.

37. In the present case, Canada's decision to use the JRP as the primary means of Crown consultation fell far short of meeting its duty to consult in light of its international obligations to ensure the meaningful participation of Indigenous peoples. Indigenous peoples were not given input into the choice of consultation mechanism nor how the environmental assessment review process was designed and implemented. Key Indigenous rights concerns, including those related

---

people, S. James Anaya, 9th Sess, UN Doc A/HRC/9/9 (11 August 2008) at para 78; *Kichwa supra* note 61 at paras.185-186.

[63] *Kichwa, supra* note 61 at paras 164, 177.

[64] *Apirana, supra* note 55.

[65] *Ibid.*

[66] Anaya, 2012, *supra* note 38 at para 65; See also *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010 at para 291.

[67] *General Comment 31, supra* note 37 at para 19.

to unceded Aboriginal land title were outside of the scope of the environmental review process. As a result, affected Aboriginal groups were not given the opportunity to meaningfully participate in decision-making according to their own customs and traditions. Further, given the serious potential impact the Northern Gateway project may have on Indigenous peoples, their cultural heritage and their capacity to use and enjoy their lands, water and resources for traditional purposes, by for example, pipelines cutting across Indigenous territories and across traditional fishing grounds, FPIC should have been presumptively required. Accordingly, the federal government failed to meet its duty to consult in the present case.

PART IV - ORDER SOUGHT

38. AI respectfully requests that the issues be determined in light of the foregoing principles, and that the appeals and applications for judicial review be allowed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of May 2015.

Justin Safayeni / Naomi Greckol-Herlich
STOCKWOODS LLP

Colleen Bauman
SACK GOLDBLATT MITCHELL LLP

Lawyers for the Intervener, Amnesty International

PART V - TABLE OF AUTHORITIES

Appendix 1: Case Law

Citation	Paras[68]
114957 Canada Ltée (Spray-Tech, Société d'arrosage) v Hudson (Ville), 2001 SCC 40, [2001] 2 SCR 241.	31
Attaran v Canada (Attorney General), 2015 FCA 37, 380 DLR (4th) 737	49
Baker v Canada, [1999] 2 SCR 817, 174 DLR (4th) 193.	65-67, 70, 75
Beckman v Little Salmon/Carmacks First Nation, 2010 SCC 53, [2010] 3 SCR 103	10, 45
Canada (Human Rights Commission) v Canada (Attorney General), 2012 FC 445, aff'd 2013 FCA 75 215 ACWS (3d) 439.	354-355
Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha, 2014 FCA 56, 238 ACWS (3d) 282	88
Divito v Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [2013] 2 SCR 157.	22-28
First Nations Child and Family Caring Society of Canada v Canada (Attorney General), 2012 FC 445, aff'd 2013 FCA 75, 215 ACWS (3d) 439.	353-354
Haida Nation v British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 SCR 511	16-18, 20
Health Services and Support -- Facilities Subsector Bargaining Assn v British Columbia, 2007 SCC 27, [2007] 2 SCR 391.	69, 70, 75, 76, 78
Hunter v Southam Inc, [1984] 2 SCR 145, 11 DLR (4th) 641.	156-157 (pg)
Imperial Oil Ltd v Quebec (Minister of the Environment), 2003 SCC 58, [2003] 2 SCR 624.	23
Manitoba Métis Federation Inc v Canada (Attorney General), 2013 SCC 14, [2013] 1 SCR 623.	69, 73, 75, 77

[68] If references are to pages, then enter "(pg)" following the page number(s).

R v Hape, 2007 SCC 26, [2007] 2 SCR 292.	35-39, 53-56
R v Sharpe, 2001 SCC 2, 178, [2001] 1 SCR 45.	175, 178
R v Sparrow, [1990] 1 SCR 1075, 70 DLR (4th) 385.	1106 (pg)
Rahaman v Canada (Minister of Citizenship & Immigration), 2002 FCA 89, [2002] 3 FCR 537.	35
Reference re Public Service Employee Relations Act (Alberta), [1987] 1 SCR 313, 38 DLR (4th) 161.	348 (pg)
Rio Tinto Alcan Inc v Carrier Sekani Tribal Council, 2010 SCC 43, [2010] 2 SCR 650.	31-39
Saskatchewan Federation of Labour v Saskatchewan, 2015 SCC 4, 380 DLR (4th) 577.	64
Taku River Tlingit First Nation v British Columbia (Project Assessment Director), 2004 SCC 74, [2004] 3 SCR 550.	24
United States v Burns, 2001 SCC 7, [2001] 1 SCR 283.	80, 85-89

Appendix 2: Legislation

Citation	Sections
Canadian Environmental Assessment Act, 2012, SC 2012, c 19.	5(1)(c), 19, 52
The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.	35

Appendix 3: Secondary Sources

Citation	Pages
Anaya, S. James, "International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State" 21:1 Ariz J Int'l & Comp L 13.	47, 49-50
McLachlin, Right Honourable Beverley, Chief Justice of Canada, "Aboriginal Rights: International Perspectives" (Speech delivered at the Order of Canada Luncheon, Canadian Club of Vancouver, Vancouver, British Columbia, 8 February 2002).	2

Sullivan, Ruth , *Sullivan on the Construction of Statutes*, 5th ed (Markham: LexisNexis Canada, 2008).	498, 509, 539, 548
Van Ert, Gib, *Using International Law in Canadian Courts*, 2d ed (Toronto: Irwin Law, 2008).	79

Appendix 4: Websites

Citation	URL
Canadian Environmental Assessment Agency, "Considering Aboriginal traditional knowledge in environmental assessments conducted under the *Canadian Environmental Assessment Act – Interim Principles*" (13 March 2013)	https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=4A795E76-1

Appendix 5: International Instruments, Reports, and Jurisprudence

Citation	Pinpoint	URL
Aurelio Cal v Attorney General of Belize, 18 Oct 2007, Supreme Court of Belize, Judgment.	127 (para)	https://www.elaw.org/node/1620
Case of the Kichwa Indigenous People of Sarayaku v Ecuador (2012), Judgment, Inter-Am Ct HR (Ser C) No 245at paras 167, 186, 200.	167, 185-186, 200 (para)	http://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf
Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua, (2001) Judgment, Inter-Am Ct HR (Ser C) No 79.	140(d) (para)	http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf
Case of the Saramaka People v Suriname (2007), Judgment, Inter-Am Ct HR (Ser C) No 172.	41, 133 (para)	http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

Case of the Yakye Axa Indigenous Community v Paraguay (2005) Judgment, Inter-Am Ct HR (Ser C) No 125.	144, 146 (para)	http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf
Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010.	291 (para)	http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf
Charter of the United Nations, 24 October 1945, 1 UNTS XVI.	1(2), 55 (arts)	https://treaties.un.org/doc/publication/ctc/uncharter.pdf
Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, 51st Sess, UN Doc A/52/18, annex V at 122 (1997).	4-5 (para)	http://www1.umn.edu/humanrts/gencomm/genrexxiii.htm
Committee on the Elimination of Racial Discrimination, *Nineteenth and twentieth reports of Canada*, 18th Sess, UN Doc CERD/C/SR.2142 (2 March 2012).	39 (para)	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FSR.2142&Lang=en
Core Document forming part of the Reports of States Parties, UN Doc HRI/CORE/CAN/2013 (30 May 2013).	122 (para)	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2FCORE%2FCAN%2F2013&Lang=en

International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 UNTS 195.		http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx
International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.	1, 27	http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.	1, 15	http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
International Law Association, *The Hague Conference: Rights of Indigenous Peoples* (2010) online: < http://www.ila-hq.org/en/committees/index.cfm/cid/1024 >.	47 (pg)	http://www.ila-hq.org/en/committees/index.cfm/cid/1024
Mary and Carrie Dann v United States, (2002), Inter-Am Comm HR, Case 11.140, Report No 75/02, doc 5 rev 1.	125, 130 (para)	http://www1.umn.edu/humanrts/cases/75-02a.html
Maya Indigenous Communities of the Toledo District (Belize) (2004), Inter-Am Comm HR, No 40/04, Case 12.053.	167 (para)	http://www1.umn.edu/humanrts/cases/40-04.html
United Nations Committee on Social, Economic and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd Sess, UN Doc E/C.12/2000/4 (11 August 2000).	27 (para)	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2000%2F4
United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, 43rd Sess, UN Doc E/C.12/GC/21.	16(e), 36-37 (para)	https://www1.umn.edu/humanrts/gencomm/

		escgencom 21.html
United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, (June 14, 1992) online: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>	15 (principle)	http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163
United Nations Declaration on the Rights of Indigenous Peoples, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2 October 2007).	8, 11, 15, 21(2), 25-28, 31, 32, 46(2) (arts)	http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
United Nations General Assembly, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*, 64th Sess, UN Doc CERD/C/64/CO/9/Rev.2 (12 March 2004).	15 (para)	http://suriname.wedd.de/print.php?sid=140
United Nations General Assembly, *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, 67th Sess, UN Doc A/RES/67/1 (24 September 2012).	5 (para)	http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/478/66/PDF/N1247866.pdf?OpenElement
United Nations General Assembly, *Report of the Special Rapporteur on the rights of indigenous peoples*, 66th Sess, UN Doc A/66/288 (10 August 2011).	85 (para)	http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/449/42/PDF/N1144942.pdf?OpenElement
United Nations General Assembly, *Rights of indigenous peoples, including their economic, social and cultural rights in the post-2015 development framework*, 69th Sess, UN Doc A/69/267 (6 Aug 2014).	20 (para)	http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/497/48/PDF/N1449748.pdf?OpenElement

United Nations Human Rights Committee, *Apirana Muhuika et al v New Zealand, Communication No. 547/1993*, 55th Sess, UN Doc CCPR/C/70/D/547/1993 (27 October 2000).	9.5 (para)	http://www1.umn.edu/humanrts/undocs/547-1993.html
United Nations Human Rights Committee, *Communication No 1457/2006: Ángela Poma Poma v Peru*, 95th Sess, UN Doc CCPR/C/95/D/14572006 (27 March 2009).	7.2 (para)	http://www.worldcourts.com/hrc/eng/decisions/2009.03.27_Poma_Poma_v_Peru.htm
United Nations Human Rights Committee, *General Comment No 23: Article 27*, 50th Sess, UN Doc CCPR/C/21/Rev.1/Add.5 (26 April 1994).	7 (para)	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.5&Lang=en
UN Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, 80th Sess, UN Doc CCPR/C/21/Rev.1/Add.31 (26 May 2004).	6, 19 (para)	http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en
UN Human Rights Committee, *Lubicon Lake Band v Canada, Communication No. 167/1984*, UN Doc A/45/40/Supp 40 (26 March 1990).	33 (para)	http://www1.umn.edu/humanrts/undocs/session45/167-1984.htm
United Nations Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya*, 9th Sess, UN Doc A/HRC/9/9 (11 August 2008).	78 (para)	http://unsr.jamesanaya.org/docs/annual/2008_hrc_annual_report_en.pdf

United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya,* 21st Sess, UN Doc A/HRC/21/47 (6 July 2012).	52 (para)	http://unsr.jamesanaya.org/docs/annual/2012_hrc_annual_report_en.pdf
UN Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*, 27th Sess, UN Doc A/HRC//27/52/Add.2 (4 July 2014).	65, 71, 76, 80 (para)	http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf