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Implementing UNDRIP in Canada: Any Role for Corporations?

By Basil Ugochukwu*

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) offers guidance on how the rights of indigenous populations could be protected in the context of member states of the United Nations. While the Declaration prescribes what states need to do to effectively realize its objective, question is whether there are expectations on non-state actors such as corporations to contribute towards attaining those objectives. Though on the one hand the UNDRIP is textually not directed at corporations, on the other hand, corporations are routinely implicated in environments where massive violations of indigenous rights have occurred in various regions of the world. The main argument of this paper is that whereas the UNDRIP does not specifically mention corporations, the contributions of businesses would nonetheless be essential for the effective implementation of UNDRIP in Canada.

In the paper, I intend to examine how the text of the indigenous policies of Canadian corporations align with objectives of the UNDRIP. I do so by analyzing a representative sample of indigenous human rights policies of Canadian corporations to see the extent that they engage with the UNDRIP and whether their policies could facilitate best-practice ideas for UNDRIP implementation. The sample policies will be assessed for their substantive content, normative language, potential weaknesses, and possible impact on UNDRIP implementation in the Canadian context. In particular, I will pay close attention to whether the studied policies have enough ingredients to meaningfully contribute to the achievement of UNDRIP goals in Canada as well as indicate any possible impacts they could have on broader corporations/indigenous communities' relations.

1. Introduction

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)¹ offers guidance on how the rights of indigenous populations are to be protected in the context of nation states that are members of the United Nations. The question is whether the obligations that the Declaration places on states requires active measures from corporations for them to be fulfilled. This is an important question given that while it is clear that the UNDRIP is not aimed at corporations as it does not mention them in the text, corporations are routinely implicated in situations and

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¹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res A/RES/61/295, UNGAOR, 61st Sess, (2007).

environments where massive violations of indigenous rights have occurred in different regions of the world.²

Domestic and international regulators generally grapple in recent times with how to rein in corporate activities such that the human rights impacts of those activities are minimized on society in general and specifically on indigenous peoples. There is a sense, however, that indigenous communities tend to be more vulnerable when business activities occur on their lands and therefore bear a disproportionate share of the burden for corporate business practices that are harmful to human rights.³ The main argument of the paper is that regardless of the fact that corporations are not mentioned in the UNDRIP, the nature of their businesses (especially if carried out on indigenous lands) means their contributions are essential for its effective implementation in Canada. This claim is based both on public expectation of the contributions that corporations should make to UNDRIP implementation, as well as the policy claims of corporations themselves about what those contributions are. It is also based on the fact that corporations are best positioned to work with Indigenous people/communities, dialogue with them, come up with best practices that are reflective of the UNDRIP rights and obligations.

² See Sarah Morales, “Digging for Rights: How Can International Human Rights Law Better Protect Indigenous Women from Extractive Industries?” (2019) 31 *CJWL* 58; Sara Seck & Penelope Simons, “Resource Extraction and the Human Rights of Women and Girls” (2019) 31 *CJWL* (i); see also Terry Mitchell, “Realising Indigenous Rights in the Context of Extractive Imperialism: Canada’s Shifting and Fledgling Progress towards the Implementation of UNDRIP” (2019) 12 *Intl J Critical & Indigenous Stud* 1 at 4. For further comparative context, see Matthew Mitchell & Davis Yuzdepski, “Indigenous Peoples, UNDRIP and Land Conflict: An African Perspective” (2019) *Int’l J Hum Rts*, online: <<https://www.tandfonline.com/doi/abs/10.1080/13642987.2019.1612374>>.

³ See for example, Kirsten Manley-Casimir, “Reconciliation, Indigenous Rights and Offshore Oil and Gas Development in the Canadian Arctic” (2011) 20 *RECIEL* 29; Erik Kojola, “Indigeneity, Gender and Class in Decision-Making about Risks from Resource Extraction” (2019) 5 *Envtl Sociology* 130; Ginger Gibson & Jason Klinek, “Canada’s Resilient North: The Impact of Mining on Aboriginal Communities” (2005) 3 *Pimatisiwin: A J of Aboriginal and Indigenous Community Health* 115; Elizabeth Hoover et al, “Indigenous Peoples of North America: Environmental Exposures and Reproductive Justice” (2012) 120 *Envtl Health Perspectives* 1645.

Many corporations in Canada and elsewhere indicate commitment to respect indigenous rights and interests in their corporate social responsibility (CSR) policies.⁴ These commitments are obviously in recognition that corporations have a significant role to play in actualizing state responsibilities towards indigenous populations. However, in spite of the UNDRIP and CSR standards, (including indigenous relations policies), human rights violations towards Indigenous peoples continue to occur as direct and indirect consequences of resource extraction by companies within or near Indigenous lands.⁵

The objective of this paper is to carry out a content-assessment of indigenous corporate policies of a few Canadian energy corporations to show the extent that they integrate UNDRIP principles.⁶ The energy sector is hugely significant in the context of the debate whether economic development should take priority over social considerations, including the protection of environmental and other human rights, and *vice versa*. The sector is also especially salient as a worthy area to study because of the well-known fact that in the near future, almost all electricity developments in Canada – renewable and otherwise – will occur within the territories of Canadian Aboriginal peoples.⁷

The policies chosen for this paper are those more likely to facilitate a better understanding of the main issues at stake in the analysis. The policies are chosen for purposes of representation and will be examined for their content, language, weaknesses, and possible impact on UNDRIP implementation. In particular, attention will be paid to whether the chosen policies engage

⁴ [Toyah Rodhouse](#) & [Frank Vanclay](#), “Is Free, Prior and Informed Consent a Form of Corporate Social Responsibility?” (2016) 131 *J Cleaner Production* 785; Gavin Hilson, “Corporate Social Responsibility in Extractive Industries: Experiences from Developing Countries” (2012) 37 *Resources Pol’y* 131.

⁵ Philippe Hanna & Frank Vanclay, “Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent” (2013) 31 *Impact Assessment & Project Appraisal* 146 at 149.

⁶ Joel Krupaa, Lindsay Galbraith & Sarah Burch, “Participatory and Multi-Level Governance: Applications to Aboriginal Renewable Energy Projects” (2015) 20 *Local Environment* 81.

⁷ *Ibid.*

sufficiently with the UNDRIP goals. Efforts will be made in the analysis to show the likelihood that the corporate policies will be impactful in the relationship between corporations and indigenous communities in Canada. Because of its specific resonance in the Canadian context, this paper pays particular attention to the portions of the UNDRIP that require the free, prior, and informed consent (FPIC) of indigenous communities before corporate activities that might have significant social/environmental impact on them are commenced. FPIC is at the core of the UNDRIP as well as being one of the major sources of friction between corporations and indigenous communities, especially in the context of natural resource development and extraction.⁸

The representative sampling method was chosen for the analysis in this paper because the corporate indigenous policies in Canada tend to be similar and as such the purpose of representation is to look at distinction based on whether or not the studied policies mentioned UNDRIP in their text and the extent that UNDRIP parameters for corporate indigenous engagement could be implied. The relevant policy documents are therefore studied for any direct references to the UNDRIP. Where any reference to the UNDRIP in the studied policies is indirect, the paper will imagine whether the application of the UNDRIP could be implied or inferred from the language used in the policies. It should be noted that it is outside the scope of the paper to determine whether or not these policies are actually applied in the practices of the corporations involved.

The paper is structured as follows: following this introduction, the second section examines the nature of the UNDRIP, its status in international law and whether or not it has any bearing on how corporations conduct their business activities. Section three looks closely at how the

⁸ See Martin Papillon & Thierry Rodon, “Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior and Informed Consent in Canada” (2017) *Envtl Impact Assessment Rev* 216.

relationship of Canadian corporations and indigenous communities tends to be fraught and why it could be in the long-term interest of corporations to keep those relationships healthy. Section four highlights the indigenous policies of four Canadian corporations, their actual provisions and how the corporations implement the policies in their operations. Section four identifies the notable components of the studied corporate policies, the extent that the policies integrate UNDRIP principles, and how the policies of one corporation compares to others. The last section concludes the paper.

2. UNDRIP, International Law and Corporations

To gain sufficient background context on the subject of this paper, I studied the articles of the UNDRIP carefully. My goal was to understand the nature of obligations the UNDRIP prescribes and upon whom those obligations rest. For clarity, the UNDRIP is a Declaration and not a treaty as that term is used in international law.⁹ Where treaties by their nature presuppose some form of binding legal obligations on states signing into them, the UNDRIP, on the contrary is not a legally binding document or instrument, but could be deemed as promulgating customary international law.¹⁰ Its text “creates no new rights in international law as many of its articles are contained in other international agreements, nor does it create any binding legal obligations in domestic legal systems.”¹¹ It enshrines non-binding normative commitments that could be

⁹ Sylvanus G Barnabas, “The Legal Status of the United Nations Declaration on the Rights of Indigenous Peoples (2007) in Contemporary International Human Rights Law” (2017) 6 Int’l Hum Rts Rev 242.

¹⁰ See James Anaya, “The Human Rights of Indigenous Peoples: United Nations Developments” (2013) 35 U Haw L Rev 983 at 998, asserting that the Declaration could also be deemed “soft” international law.

¹¹ Megan Davis, “Indigenous Struggles in Standard Setting: The *United Nations Declaration on the Rights of Indigenous Peoples*” (2008) 9 Melb J Int’l L 439 at 465.

persuasive in the interpretation of indigenous rights and obligations in international and domestic processes.¹²

The nature of UNDRIP as a normative instrument in international law could be gleaned from the way its articles are couched. For purposes of this paper, emphasis is placed on how actors in international law are required to conduct their affairs with the provisions of UNDRIP in mind. While there is no binding obligation on such actors, UNDRIP nevertheless places some expectations on them to act in ways conducive to achieving the goals of the Declaration. It is clear that those expectations are placed squarely on states who also happen to be major subjects of international law.

As such the UNDRIP uses a variety of statements to indicate the nature of the expectations placed on states. They include such forms of positive measures as “States shall provide effective mechanisms...”,¹³ “States shall provide redress through effective mechanisms...”,¹⁴ “States shall take effective measures...”,¹⁵ “States shall consult and cooperate in good faith...”,¹⁶ “States shall establish and implement...”¹⁷ and “States shall give legal recognition and protection to...”,¹⁸ among others.

¹² Mauro Barelli, “The Role of Soft Law in the International Legal System: The Case of the UN Declaration on the Rights of Indigenous Peoples” (2009) 58 Int’l & Comp L Q 957; see also Mauro Barelli, *Seeking Justice in International Law: The Significance and Implications of the UN Declaration on the Rights of Indigenous Peoples* (London: Routledge, 2016); Hurst Hannum, “The Status of the United Nations Declaration on Human Rights in National and International Law” (1995) 25 Ga J Int’l & Comp L 287.

¹³ Office of the UN High Commissioner for Human Rights, The United Nations Declaration on the Rights of Indigenous Peoples, OHCHR, HR/PUB/13/2 (13 September 2007) online: <<https://www.refworld.org/docid/5289e4fc4.html>> Art. 8(2).

¹⁴ *Ibid* Art. 11(2).

¹⁵ *Ibid* Art. 13(2).

¹⁶ *Ibid* Art. 19.

¹⁷ *Ibid* Art. 27.

¹⁸ *Ibid* Art. 26(3).

Apart from states, the only other institutions mentioned in the UNDRIP as bearing any expectations of acting in conformity with its provisions are “specialized agencies of the United Nations system and other intergovernmental organizations”¹⁹ and “The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies...”.²⁰ There is no mention of corporations even when it is clear that corporations are more often than not the perpetrators of the denial of indigenous rights especially in the context of natural resource extraction.²¹ In this sense, because corporations are not mentioned in the UNDRIP, identifying how they could contribute to its implementation, in Canada or internationally, may seem counterintuitive. The challenge is to show that corporations could contribute to advancing the objectives of UNDRIP even though they are not mentioned in its text at all.

Between 2005 and 2011 when he was the Special Representative of the UN Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie concluded that companies should respect internationally recognized human rights, even if such respect was not required by host governments.²² Ruggie’s work essentially involved efforts to fashion ways that international law could be used as a means to redress human rights violations resulting from corporate activities. While those efforts have not been entirely successful on the idea of prescribing mandatory legal norms for corporations, it succeeded at the level of creating basic principles of accountability.

¹⁹ *Ibid* Article 41.

²⁰ *Ibid* Article 42.

²¹ See Suzana Sawyer & Edmund Gomez, *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations and the State* (New York: Palgrave Macmillan, 2012); Emma Gilberthorpe ed., *Natural Resource Extraction and Indigenous Livelihoods: Development Challenges in the Era of Globalization* (London: Routledge, 2014); S James Anaya, “Report of the Special Rapporteur on the Rights of Indigenous Peoples on Extractive Industries and Indigenous Peoples” (2015) 32 *Ariz J Int’l & Comp L* 109 at 111.

²² See Hanna & Vanclay, *supra* note 5 at 149; See generally Guiding Principles on Business and Human Rights.

This attainment was by way of the United Nations Guiding Principles on Business and Human Rights (otherwise known as the “Ruggie Principles”).²³ The principles are not binding on corporations. Instead they enshrine voluntary norms of social responsibility which corporations are under no mandatory legal obligations to adopt in their operations.²⁴ In reality, international law has settled on allowing corporations to set their own voluntary standards of behaviour in relation to human rights impacts of their business activities. The thinking obviously is that where mandatory legal regulations are required, it is within the purview of domestic law and not international law.

Given that the UNDRIP avoided mentioning corporations and that the international legal system and institutions have only struggled with limited success to impose human rights responsibility on corporations, the temptation might be to think the topic is a moot issue. I would argue otherwise and suggest that the doubts raised above only strengthen the significance of inserting corporations into the UNDRIP implementation process at the domestic level. Given the pervasive level of corporate influence on indigenous lands and resources, corporations should either directly or indirectly feature in any mechanism to ensure the success of UNDRIP implementation. It is also the case that corporations recognize that regardless of developments on the government policy level, they have a responsibility to conduct their businesses in a manner that does not compromise the rights of individuals and communities.

3. Canada’s Corporations and Indigenous Peoples Rights

²³ See United Nations Human Rights Council, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, including the Right to Development - Protect, Respect and Remedy: A Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises”, UNHRC, 8th Sess, A/HRC/8/5 (2008), online (pdf): <<http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>>.

²⁴ *Ibid.*

Canada hosts a considerable number of economic development and natural resource extraction projects that are located on indigenous lands and territories. The said projects often pitch corporations implementing them against indigenous populations who fear the negative human rights impacts of these projects on their environments, cultures and way of life. To give a few examples, the controversial Keystone XL oil pipeline operated by TransCanada Corporation traverses the territories of the Blackfoot Confederacy in Canada, as well as the Great Sioux Nation, and Ponca tribe in the United States. TransCanada Corporation is also promoter of the nearly 30-kilometre stretch of natural gas pipeline running through traditional territories of the Aroland and Ginoogaming First Nations located northeast of Thunder Bay, Ontario.

Similarly, Enbridge's Line 9 oil pipeline passes through traditional territories of the Chippewas of the Thames First Nation in South Western Ontario. The same corporation operates the Northern Gateway Pipeline project which passes through the territories of the Gitxaala First Nation in British Columbia. On its part, the Canadian subsidiary of the French renewable energy corporation, EDF Renewables' owns and operates the Romney Wind Energy Centre that is located in the territory of the Walpole Island First Nation in South Western Ontario.

One instance where the displeasure of an indigenous community to a corporate project boiled over to litigation is the case of *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*²⁵, in which an aboriginal community challenged a proposed mining road passing through contested territory. The Supreme Court of Canada concluded in that case that the duty to consult "arises when a Crown actor [in this case a corporation] has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct

²⁵ *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, [2004] 3 SCR 550.

that might adversely affect it.”²⁶ The conflict between the Indian nations of the Standing Rock reservation and the United States government regarding the Dakota Access pipeline project is evidence enough that conflict between indigenous communities and corporations operating on their lands is a global problem and not limited to any geographical region of the world.²⁷ Studies have also shown that indigenous land claims could significantly interfere with major corporate business activities leading to material losses through delays in construction, operational shutdowns and other unexpected costs, including legal settlements, litigation and regulatory/political intervention.²⁸

It seems to be the case that when corporate projects are to be located on indigenous lands in Canada, getting the affected communities onboard the projects is a major challenge. In a report published in 2017, the Canadian Chamber of Commerce noted that some of the business people they interacted with believed that “addressing – and correcting – the historic grievances held by Indigenous peoples regarding their treatment when developments occurred on or near their lands is the “elephant in the room” in political reconciliation in Canada.”²⁹ As to fixing responsibility for

²⁶ *Ibid.*

²⁷ Volker Lehmann & Lennart Inklaar, “Can the (Interlinked) SDGs Curtail the Extractive Industries?” in Barbara Adams et al eds., *Spotlight on Sustainable Development 2017: Reclaiming Policies for the Public* (Bonn: Civil Society Reflection Group on the 2030 Agenda for Sustainable Development, 2017) 121 at 122, online (pdf): <http://www.world-psi.org/sites/default/files/documents/research/spotlight_report_2017.pdf#page=121>; See also Suzana Sawyer & Edmund Terence Gomez eds, *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State* (New York: Palgrave Macmillan, 2012); Lisa Calvano, “Multinational Corporations and Local Communities: A Critical Analysis of Conflict” (2008) 82 J Bus Ethics 793; Al Gedicks, “Transnational Mining Corporations, the Environment, and Indigenous Communities” (2015) 22 Brown J World Aff 129; Ben Naanen, “The Nigerian State, Multinational Oil Corporations, and the Indigenous Communities of the Niger Delta” in Suzana Sawyer & Edmund Terence Gomez eds, *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations, and the State* (New York: Palgrave Macmillan, 2012) at 153.

²⁸ Witold J Henisz & James McGlinch, “ESG, Material Credit Events, and Credit Risk” (2019) 31 J App Corp Fin 105 at 110; see also *Delaney Greig*, “UNDRIP at 10: Is Respect for International Indigenous Rights Becoming a Standard of Practice for Canadian Companies?” (9 August 2017), online: *SHARE* <<https://share.ca/undrip-at-10-is-respect-for-international-indigenous-rights-becoming-a-standard-of-practice-for-canadian-companies/>>.

²⁹ See Canadian Chamber of Commerce, “Coming Together, Making Progress: Business’s Role in Reconciliation with Indigenous Peoples” (May 2017), online (pdf): <https://chambermaster.blob.core.windows.net/userfiles/UserFiles/chambers/2614/File/170511_ComingTogetherMakingProgress.pdf> at 10.

reconciling corporations and indigenous communities in Canada, the Supreme Court of Canada had held even before the UNDRIP was adopted that "the Crown [government] alone remains legally responsible for the consequences of its actions and interactions with third parties [such as corporations] that affect Aboriginal interests."³⁰ The terms of the UNDRIP make it unequivocal that states retain this position in international as well as domestic law. In other words, states bear primary responsibility for protecting the rights of indigenous communities when development projects are implemented in those communities and cannot transfer that responsibility to private entities.

As the Canadian Supreme Court further reiterated in *Haida Nation*, "Third parties cannot be held liable for failing to discharge the Crown's duty to consult and accommodate. The honour of the Crown cannot be delegated, and the legal responsibility for consultation and accommodation rests with the Crown."³¹ While the practice has been for the government to delegate its responsibilities towards indigenous communities to companies seeking approval of their projects, this often ends up causing uncertainty as to the full nature of corporate obligations created.³²

Though the *Haida Nation* pronouncement came from the court, it is a position that Canadian corporations are all too familiar with, and which they reiterated whenever they had the opportunity to do so. In a 2016 Position Paper on implementing the UNDRIP in Canada, the Canadian Association of Petroleum Producers (CAPP) acknowledged that "the resource extraction industries, including ours, have an important role in contributing to the economic and social

³⁰ *Haida Nation v Minister of Forests and Attorney General of British Columbia* [2004] 3 SCR 511; see also Jacob Damstra, "Heroic or Hypocritical: Corporate Social Responsibility, Aboriginal Consultation, and Canada's Extractive Industries Strategy" (2015) 25 *Transnt'l & Contemp Probs* 153 at 176.

³¹ *Haida Nation*, *ibid* at 537 para 53; see also Lorne Sossin, "The Duty to Consult and Accommodate: Procedural Justice as Aboriginal Rights" (2010) 23 *Can J Admin L & Pract* 93.

³² See Damstra, *supra* note 30 at 159.

sustainability of Indigenous Peoples in Canada”,³³ and that “government has the primary responsibility. It is important for government to fulfill its duty in reconciliation and not pass this responsibility or cost on to industry.”³⁴ There is an implied undertaking in this acknowledgment that Canada’s oil extraction industry will honour regulatory measures enacted within Canada that are intended to advance UNDRIP implementation in the country.³⁵

Apart from when corporations are required by laws and regulations to conduct their businesses in a manner that does not undermine state commitment to the goals of UNDRIP, corporations could also implement voluntary policies. These policies may or may not reference the UNDRIP as their normative foundations. At a general level, Canadian corporations seem to recognize the need to consider the rights and interests of indigenous peoples whenever corporate projects are likely to produce negative human rights impacts. This is evident from the sheer number of Canadian corporations that have established indigenous affairs departments. Where corporations have set up these departments, they have also formulated indigenous policy principles to guide their processes on the issue. Knowing whether the UNDRIP is, or is not, a significant motivation for these indigenous policy documents has not been given appropriate scholarly attention and is therefore covered in the latter parts of this section.

However, before delving into the sample individual corporate indigenous policies, it might be useful to first present a representative picture of the field in Canada in a broader sense. In

³³ See CAPP, “Discussion Paper on Implementing the United Nations Declaration on the Rights of Indigenous Peoples in Canada” (26 April 2016), online: <<https://www.capp.ca/media/issues-and-submissions/undrip-submission>> at 4.

³⁴ *Ibid.*

³⁵ See Greig, *supra* note 28 stating: “When SHARE engages companies about their Indigenous relations policies and practices we frequently hear that they are waiting for direction from the federal government before making a commitment to adopt *UNDRIP* into their practices. Yet there is no need for this hesitation. Nothing is barring companies in Canada from proactively adopting *UNDRIP* as a guide to business conduct and they may be missing out on opportunities by failing to do so.”

composing this picture, I will rely on a study from a non-governmental organization that studied Canadian corporate profiles and performances from various evaluation points. I intend also to utilize a grading mechanism created by a Canadian indigenous non-governmental group which rated Canadian corporations for how progressive or not their aboriginal relations practices are.

I will start with the very helpful insights from a July 2017 study by the Canadian non-governmental group Shareholders Association for Research and Education (SHARE).³⁶ The group sought to explain corporate activities in Canada's indigenous communities from a social reconciliation perspective. Their objective was grounded in Call to Action #92 in the final report of Canada's Truth and Reconciliation Commission which called on the country's corporate sector "to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving indigenous peoples and their lands and resources."³⁷

The study involved 173 Canadian public companies spread out across eight industry sectors and covered six themes. One of those themes was a question on the number of surveyed companies committed to seeking free, prior and informed consent of indigenous peoples.³⁸ A major indicator of the study was whether any or some of the companies committed to the FPIC and to applying the UNDRIP more generally in their operations. Other indicators included the level of indigenous community investment and initiatives that the corporations supported, contracting and

³⁶ Delaney Greig & Andrijana Djokic, "Business and Reconciliation: How Can Investors Evaluate the Efforts of Canadian Public Companies?" (July 2017), online (pdf): *SHARE* <https://share.ca/documents/investor_briefs/Social/2017/Business_and_Reconciliation_How_can_investors_evaluate_the_efforts_of_Canadian_public_companies.pdf>.

³⁷ See Truth and Reconciliation Commission of Canada, "Honoring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada" (2015) online (pdf): <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf> at 336.

³⁸ Greig & Djokic, *supra* note 36 at 5.

procurement with indigenous businesses, employment of indigenous professionals and indigenous board members.

The report showed that the companies performed best in community investments (30%) and contracting/procurement (22%). On the contrary only 3% of companies surveyed prioritized the FPIC and just 1% had indigenous persons on their board.³⁹ Only ten companies representing a mere 6% of the total number surveyed made some form of commitment to UNDRIP generally and the FPIC in particular.⁴⁰ In addition, while some companies stated the desire to respect indigenous rights under Canadian law, the study did not interpret those statements as commitment to international indigenous human rights standards.⁴¹

This paper also benefited from the work of the Canadian Council for Aboriginal Business (CCAB) which has established a ranking scheme for Canadian businesses on the metric of Progressive Aboriginal Relations (PAR).⁴² The certification process includes an externally-verified and independent jury review of corporate Aboriginal Relations activities in four key performance areas: employment, business development, community investment, and community engagement. Corporations earn gold, silver, bronze or committed ranking based on their aboriginal performances. Gold corporations “demonstrate best practice for those companies introducing Aboriginal relations to their business strategy or seeking to improve year over year.”⁴³ Corporations in the silver category are those that “recognized early the value of working with Aboriginal communities and can point to outcomes that have made a difference.”⁴⁴ In the bronze

³⁹ *Ibid.*

⁴⁰ *Ibid* at 15.

⁴¹ *Ibid.*

⁴² See Canadian Council for Aboriginal Business, “PAR Companies”, online: <<https://www.ccab.com/programs/par-companies/#gold-full-row>>.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

category are companies that “are beginning a journey, developing the goals and action plans that position them to work with the Aboriginal community.”⁴⁵ Lastly, committed corporations are those only at “the beginning stages of tracking and managing their Aboriginal relations strategies.”⁴⁶ Committed companies also would have “submitted a report for one year’s worth of company activities and intend to undergo external verification of their performance in the future.”⁴⁷

In the next section, I will analyze the indigenous policy documents of four Canadian corporations as examples of what those policies look like in practice and whether through them the corporations involved could contribute to the implementation of the UNDRIP in Canada.

4. UNDRIP, Indigenous Rights and Four Canadian Corporations

In this section, I carry out the major task of this paper by analyzing the indigenous relations policies and practices of four Canadian corporations to see the extent that they incorporate the principles of UNDRIP. There had been earlier studies on how Canadian corporations were building relationships with indigenous communities prior to the UNDRIP.⁴⁸ One such study indicated four main priority areas that corporations identified for action – pre-employment, employment, business development and community relations.⁴⁹ While these priorities would have been relevant at the time they were formulated, it is obvious that at least in the area of community consultation and consent as components of community relations, the UNDRIP has expanded what would be required of governments and institutions doing business on indigenous lands and territories. Part

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ See for example Roger Hill & Pamela Sloan, *Corporate Aboriginal Relations: Best Practice Case Studies* (Toronto: Hill Sloan Associates, 1995).

⁴⁹ Roger Hill & Pamela Sloan, “A New Era in Corporate Aboriginal Relations” (1996) 23 Can Bus Rev 22 at 23.

of the analysis in this section is to highlight the extent that corporations are responding to the requirements of the UNDRIP.

*I. Hydro One*⁵⁰

Hydro One describes itself as Canada's largest electricity transmission and distribution service provider. The corporation, with a Bronze level CCAB-PAR rating, distributes electricity across Ontario, which is home to no less than 38 per cent of Canada's overall population.⁵¹ Hydro One undertakes to "work proactively to build relationships with Indigenous Peoples based on understanding, respect and mutual trust."⁵² The corporation also promised to "respect the rights of Indigenous Peoples including the Aboriginal and treaty rights of Aboriginal peoples as recognized and affirmed in section 35 of the *Constitution Act*, 1982."⁵³

The company says it is committed to working with Indigenous peoples in a spirit of cooperation and shared responsibility, acknowledging that Indigenous peoples have unique historic and cultural relationships with their land and a unique knowledge of the natural environment.⁵⁴ Significantly, Hydro One believes that its relationships with Indigenous peoples is vital to achieving its corporate objectives.

For this reason, the company pursues a three-fold agenda that helps it [1] to adapt its business practices to respond to the legal rights of Indigenous communities and individuals; [2] develop and maintain relationships across all the company's lines of business with Indigenous people that demonstrate understanding, respect and are based upon mutual trust; and [3] undertake the

⁵⁰ See "Hydro One Indigenous Relations Policy" (February 2018), online (pdf): <<https://www.hydroone.com/abouthydroone/indigenousrelations/Documents/Hydro%20One%20Indigenous%20Relations%20Policy.pdf>>.

⁵¹ Hydro One, "About Us", online: <<https://www.hydroone.com/about/>>.

⁵² *Supra* note 50.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

procedural aspects of consultation, as required by law or guided by leading industry practices, in the early stages of, and throughout, projects that may have an impact on Indigenous rights.⁵⁵

*II. Enbridge Incorporated*⁵⁶

On its part, Enbridge claims to be Canada's largest natural gas distribution provider.⁵⁷ It serves about 3.7 million retail customers in Ontario, Quebec, New Brunswick all in Canada and New York State in the United States of America.⁵⁸ The company is rated silver in CCAB's Progressive Aboriginal Relations ranking scheme. In its indigenous relations policy, the corporation says it is committed "to working with Indigenous communities in a manner that recognizes and respects those legal and constitutional rights and the traditional lands and resources to which they apply",⁵⁹ and that its projects and operations "are carried out in an environmentally responsible manner."⁶⁰

Importantly, the corporation also recognizes "the importance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) within the context of existing Canadian and U.S. law and the commitments that governments in both countries have made to protecting the rights of Indigenous Peoples."⁶¹ Enbridge's strategy is to engage in forthright and sincere consultation with Indigenous Peoples about its projects and operations through processes

⁵⁵ *Ibid.*

⁵⁶ See "Enbridge Inc. Indigenous Peoples Policy" (May 2018), online (pdf): <https://www.enbridge.com/~media/Enb/Documents/About%20Us/indigenous_peoples_policy.pdf?la=en>; see also Enbridge, "Indigenous Rights and Relationships in North American Energy Infrastructure: A Discussion Paper" (June 2018), online (pdf): <https://www.enbridge.com/~media/Enb/Documents/CSR/Reports/Enbridge_Discussion_Paper_Indigenous_Rights_Relationships.pdf>.

⁵⁷ *Ibid* at 3.

⁵⁸ *Ibid.*

⁵⁹ *Supra* note 56.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

that seek to achieve early and meaningful engagement, so their input can help define our projects that may occur on lands traditionally used by Indigenous Peoples.⁶²

*III. TC Energy (Formerly TransCanada Corporation)*⁶³

TC Energy is an energy infrastructure company and has no rating in the CCAB-PAR ranking system. The Company has been involved in one of the most controversial projects in the context of this paper because of the manner the said project emphasises the major components of the analysis. At least in relation to the company's Keystone XL pipelines project, there is a significant correlation in the uneasy relationship of corporations – transnational and domestic – to the indigenous communities within which their businesses are conducted.⁶⁴ TC Energy is engaged in the development and operation of North American energy infrastructure, including natural gas and liquids pipelines, power generation and natural gas storage facilities.

TC Energy respects the diversity of Aboriginal cultures, recognizes the importance of the land and cultivates relationships based on trust and respect; TC Energy believes that by developing positive, long-term relationships with the Aboriginal communities whose lives may be impacted by our activities, we can conduct our business while respecting the community interests. TC Energy's Aboriginal Relations Policy must be flexible to address the legal, social and economic realities of Aboriginal communities across Canada. TC Energy works together with Aboriginal communities to identify impacts of company activities on the community's values and needs in

⁶² *Ibid.*

⁶³ See "TransCanada Aboriginal Relations", online (pdf):

<<https://www.transcanada.com/globalassets/pdfs/commitment/indigenous/transcanada-aboriginal-relations.pdf>>.

⁶⁴ Kurt Gasser, "The TransCanada Keystone XL Pipeline: The Good, the Bad, and the Ugly Debate" (2012) 32 Utah Envtl L Rev 489; F Gregory Hayden, "Conflicts in the Licensing Process for TransCanada's Keystone XL Pipeline", online: <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1075&context=econfacpub>>; Courtney Cherry, "The Keystone Pipeline: Environmentally Just?" (2011) 6 Envtl & Energy L & Pol'y J 125; Cindy Woods, "The Great Sioux Nation v. the "Black Snake": Native American Rights and the Keystone XL Pipeline" (2016) 22 Buff Hum Rts L Rev 67.

order to find mutually acceptable solutions and benefits; TC Energy respects legal and constitutional rights of Aboriginal peoples and recognizes that its relationships with Aboriginal peoples are separate and different from that of the Crown.

IV. EDF Renewables⁶⁵

EDF Renewables is a French renewable-energy company with a Canadian subsidiary EDF Renewables, Canada. It is a market leader in renewable energy with more than 1,500 MW of wind and solar power facilities in service or under construction. I have included this company in this paper for one major reason. Because the major corporations doing business in indigenous territories are big oil and gas corporations that contribute to fossil fuel consumption and emission of carbon into the atmosphere, there could be the temptation to assume that this category of corporations are the only ones whose activities are harmful to indigenous communities. In that case, renewable energy corporations could unconsciously be exempted from the sort of judgment often passed on fossil fuel companies. This is not necessarily the case as it has been proven over time that the latter category of corporations could also be implicated in the violation of the rights of indigenous peoples in whose communities they do business.⁶⁶

Apparently in recognition of this fact, EDF believes in protecting natural resources and developing clean, renewable energy.⁶⁷ The company also believes that harmonious collaboration with Indigenous communities creates opportunities to partner as co-developers and project owners.⁶⁸ EDF Renewables claims to be experienced in development of community projects; it

⁶⁵ See “EDF Renewables: Powering Progress” (June 2018), online: <<https://www.edf-re.ca/wp-content/themes/edf-re-ca/php/flipbook.php?id=3308>>.

⁶⁶ See Mary Finley-Brook, “Renewable Energy and Human Rights Violations: Illustrative Cases from Indigenous Territories in Panama” in Karl Zimmerer ed., *The New Geographies of Energy: Assessment and Analysis of Critical Landscapes* (New York: Routledge, 2013) at 162.

⁶⁷ *Supra* note 65.

⁶⁸ *Ibid.*

values and respects the traditions and culture of indigenous peoples.⁶⁹ The company provides economic benefits and opportunities that lead to capacity building initiatives and help strengthen the ability of indigenous peoples, communities, and businesses to participate in economic opportunities beyond the renewable energy project; respecting and recognizing local traditions, concerns, and priorities.⁷⁰

5. Notable Issues in the Corporate Indigenous Relations Policies

A careful examination of the chosen indigenous policy documents shows some recurring themes as well as areas of divergence and difference. A theme that is common to all four policies is that of *respect and recognition*. Hydro One says the relationship it seeks to build with Canada's indigenous communities is one established on "understanding, respect and mutual trust".⁷¹ Enbridge "recognizes and respects those legal and constitutional rights"⁷² that are characteristic of indigenous peoples in Canada. TC Energy envisages relationships with indigenous communities that are "based on trust and respect"⁷³ while EDF Renewables is committed to "respecting and recognizing local traditions"⁷⁴ of the indigenous communities.

Three of the four corporations whose policies are examined highlight the constitutional basis for their relationship with Canada's indigenous communities. Hydro One undertook to respect the rights of Indigenous Peoples including the Aboriginal and treaty rights of Aboriginal peoples but especially those rights recognized and affirmed in section 35 of the Constitution Act,

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Supra* note 50.

⁷² *Supra* note 56.

⁷³ *Supra* note 63.

⁷⁴ *Supra* note 65.

1982.⁷⁵ Enbridge states in its policy that in pursuing sustainable relationships with Indigenous Nations and groups in proximity to where the company conducts business, it recognizes the “legal and constitutional rights possessed by Indigenous Peoples in Canada and in the U.S., and the importance of the relationship between Indigenous Peoples and their traditional lands and resources.”⁷⁶ On its part, TC Energy indicated a respect for the legal and constitutional rights of Aboriginal peoples as core to its indigenous relations. The company also recognizes that its relationships with Aboriginal peoples are separate and different from the relationship those peoples have with the Crown.⁷⁷ EDF Renewables did not state the basis for the relationship it forges with indigenous communities in Canada.

All but one of the corporate policies studied for this paper share the view that Indigenous Peoples have rights that are distinct from those enjoyed by non-indigenous persons in society. This is a direct affirmation of the very rights that the UNDRIP is intended to emphasize on a global scale.⁷⁸ Hydro One respects the constitutional and treaty rights of Aboriginal peoples.⁷⁹ In addition to the “legal and constitutional rights” of indigenous peoples in whose territories the company does business, the company also includes their “traditional lands and resources”⁸⁰ in the discussion. TC Energy simply “respects legal and constitutional rights of Aboriginal peoples”⁸¹ in its corporate policy. Enbridge is even more direct in this regard. The company states that indigenous communities that it interacts with in both Canada and the U.S. have distinct rights, hence the

⁷⁵ *Supra* note 50.

⁷⁶ *Supra* note 56.

⁷⁷ *Supra* note 63.

⁷⁸ The Indigenous peoples’ struggle to ensure respect for their human rights started with the demand for the “right to have rights” and there are at least 15 international agreements addressing the specific rights of indigenous peoples. See Hanna & Vanclay, *supra* note 8 at 147-148.

⁷⁹ *Supra* note 50.

⁸⁰ *Ibid.*

⁸¹ *Supra* note 63.

company does not consider them to be simply “stakeholders.”⁸² This is another area where EDF Renewables remained silent on its beliefs.

Significantly, two of the four studied corporations mentioned UNDRIP in their indigenous policy document. Enbridge recognized the importance of the UNDRIP but only in the context of existing American and Canadian laws.⁸³ The company went further to explain its understanding of the role of the UNDRIP in improving relationships with the indigenous communities within which its businesses are conducted. It stated as follows:

The governments of Canada and the U.S. have both endorsed UNDRIP, although neither government views this declaration as legally binding. While every country with Indigenous populations has unique circumstances that require a unique path forward, UNDRIP creates expectations that governments will secure “free, prior and informed consent” (FPIC) from Indigenous Peoples for resource development that could impact their rights.⁸⁴

On its part, TC Energy states that when the company is engaging and collaborating with Indigenous groups, the expectation is that all their personnel would “respect the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its guiding principles within the context of existing Canadian, U.S. and Mexican law and the associated commitments and roles that governments in those jurisdictions have, relative to Indigenous Groups.”⁸⁵

While Hydro One does not specifically mention UNDRIP in its policy, the document however contains a section entitled *A DUTY TO CONSULT* that could have been taken out of an

⁸² *Supra* note 56.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Revised Indigenous Relations Policy Document (2019), online (pdf): <<https://www.tcenergy.com/globalassets/pdfs/about/governance/tc-indigenous-relations-policy.pdf>> at 1.

article of the UNDRIP.⁸⁶ In this section, the company confirmed that it is the Crown's duty to consult and, where appropriate, accommodate Indigenous peoples if Crown action or decision has potential to affect the interests of Indigenous peoples. This company further states that this duty is triggered "when the Crown has knowledge, real or constructive, of the potential existence of Indigenous rights or title and contemplates conduct that might adversely affect indigenous interests."⁸⁷

Hydro One claims that it assesses each project based on the nature of the project itself, the Indigenous groups affected and their proximity to the project and the potential for any adverse effects. The company undertakes to consult with the Crown to determine which Indigenous communities need to be consulted before projects can go forward.⁸⁸ If the company were to be diligent in applying this undertaking across its business practices, question is whether it would matter that UNDRIP was not specifically mentioned. I will return to this question further down the paper. Both TC Energy and EDF Renewables were silent on whether or not UNDRIP was the inspiration for their indigenous relations policy ideas.

Up to this time, I have only addressed the actual written policies of the chosen corporations and not necessarily the methods that they adopt in translating the policies into practice. This is the issue that I address next. As always is the case with most challenges in everyday life, promise is not the same as delivery, not even the promise of integrating the interests of indigenous communities in corporate business practices. While not passing judgment on whether or not the

⁸⁶ *Supra* note 1, art. 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

⁸⁷ *Supra* note 50.

⁸⁸ *Ibid.*

methods chosen for each studied company are effective or not, it is evident that they approach their implementation strategies in various ways.

Enbridge, for example, performs its indigenous policy agenda first through what it calls Cross-Cutting Decision-Making Structures which involves strategy, execution and coordination of its indigenous policy across various business units in the organization.⁸⁹ Its other methods include the integration of Indigenous Peoples Policy Requirements in key Management Systems of the company as well as the use of Community-Specific Consultation, Engagement, Agreements and Collaborations. The latter process incorporates such practices as impact assessment, mitigation and environmental protection.⁹⁰

According to Hydro One, the company's indigenous policies fall within its Health, Safety, Environment and Indigenous Peoples Committee. Significantly, six members of its Board of Directors sit on this Committee indicating perhaps the level of significance that the company accords the issues the Committee is saddled with.⁹¹ With such a governance mechanism, it is no wonder the company says its Indigenous relations policy is fully integrated into its business strategy and is a standing agenda item at monthly Senior Management Operations Committee meetings. Accordingly, the company has established indigenous relations integration plans in various lines of its business, that involve resources, benchmarks, measures and reports.⁹²

TC Energy uses both a strategic and an operational risk assessment approach in implementing its indigenous relations policies. As such the company says it builds risk assessments into the decision-making process at all levels of its operations. The company also

⁸⁹ See Enbridge, "Implementing Our Indigenous Peoples Policy" online: <<https://www.enbridge.com/sustainability-reports/indigenous-discussion-paper/implementing-policy>>.

⁹⁰ *Ibid.*

⁹¹ See Hydro One, "Delivering a Powerful Future: 2017 Annual Report" (2017), online (pdf): <<https://www.hydroone.com/investorrelations/Reports/Hydro%20One%20Limited%20Annual%20Report%202017.pdf>> at 13.

⁹² *Ibid.*

listens to its stakeholders' concerns and collaborates with its peers in the industry. In the company's own words:

Through risk identification and assessment, we are able to better understand our risk exposure; make more informed business decisions; and develop strategies for monitoring, mitigating, and preventing impacts on people, communities and our organization.⁹³

Moreover, the company uses other public engagement tools, including helplines and online accounts, to enable landowners to reach TC Energy personnel 24 hours a day. These initiatives are intended to educate and raise public awareness about pipelines. The company claims also to participate in industry groups and engage in policy discussions with regulators and government.⁹⁴

These policies already give the impression that the chosen corporations, even if they are not under a legal obligation to do so, consider their relationship with the indigenous communities in whose territories they conduct business to be significant in achieving their corporate agenda. However, unless when required by law to carry out specific actions related to their business within indigenous territories (like conducting mandatory environmental impact assessments, or indigenous consultation required under common law or statute), corporations are not bound by the promises/pledges they make in their policy documents. It could therefore be said that whatever they are able to implement would be good enough in the circumstances as the alternative – that is, not doing anything at all – would be worse. In that case, it would not matter in what language, breadth, and intensity the policy documents are expressed. This is especially so given that from experience, what corporations do in practice, are often irreconcilable to what they claim to do on paper.

⁹³ *Supra* note 85.

⁹⁴ *Supra*.

Corporations operated indigenous relations policies before the adoption of UNDRIP. However, the policies analyzed in this paper were drafted long after the UNDRIP was adopted by the United Nations. It is therefore a valid expectation that corporations claiming to have the best interests of indigenous communities that are likely to be affected by business practices at heart would take the provisions of UNDRIP as points of reference. While the provisions of the policies themselves may contain UNDRIP elements, not placing the Declaration in the proper context within the policies could justify negative presumptions about whether or not the corporations concerned are motivated by best-practice considerations. It is also the case that majority of the corporations surveyed lagged behind the UNDRIP because even though their policies came several years after the Declaration, they did not deem it important to actually mention it in name in their policies. It could be argued that whether corporations actually refer to the UNDRIP in their indigenous policies could not be as material to the conversation as the actual parameters prescribed in the Declaration such as those relating to the FPIC. In other words, even without mentioning the UNDRIP in their policies, if corporations applied the parameters set by the Declaration it would not matter much that they do not reference the Declaration in name. Nonetheless, I hold the view that mentioning the UNDRIP in name in a corporate indigenous policy document is a good first step towards not only acknowledging UNDRIP provisions but also being held accountable to their implementation.

This is especially significant given that Canadian corporations have robustly lobbied against federal legislative initiatives aimed at evening the playing field in their relationship with indigenous communities. For example, the Canadian Association of Petroleum Producers (CAPP) was against Bill C69 which would have altered federal environmental assessment processes to

include a broad range of social impacts that could be of concern to Indigenous communities.⁹⁵ Could it be, therefore, that corporate *animus* towards the UNDRIP goes much farther than simply not naming it in corporate indigenous relations policies? There is scope to question if it is not hypocrisy that corporations that indicate willingness to respect the rights of indigenous communities are also opposed to legislation intended to make the realization of that objective easier to accomplish. However, as stated in the introduction, reconciling corporate intentions expressed through indigenous policies with actual practice is not the goal of this paper.

What is clear though is that there might be a price to pay for corporations that say one thing on paper and do the opposite in practice. According to SHARE, “Companies that fail to operate in a way that respects an international law standard like UNDRIP expose themselves to risks of reputational damage, regulatory intervention, litigation, project delays and disruptions, shutdowns and financial loss.”⁹⁶ The point that the group makes is that the language used in expressing the commitment to indigenous rights is not more important than actually respecting the standards laid down in the UNDRIP. In other words, the promises on paper have to be matched with practical implementation by corporations.⁹⁷ It follows that where corporations have lofty indigenous relations policy ideals but oppose efforts by government to put the ideals into effect through the integration of UNDRIP in various regulatory processes, it would be entirely legitimate for indigenous communities and the public at large to be skeptical of those corporate policy ideals.

⁹⁵ See An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, online: <<https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=9630600&Language=E>>; see also Canadian Association of Petroleum Producers, “CAPP Issues Statement on Bill C-69” (21 June 2019), online: <<https://www.capp.ca/media/news-releases/capp-statement-bill-c-69>>.

⁹⁶ See Greig, *supra* note 28.

⁹⁷ For example, TC Energy’s claim to respect the legal and constitutional rights of Aboriginal peoples does not seem to tally with its persistence with the Keystone XL pipeline project regardless of the opposition and concerns of the Standing Rock Sioux indigenous community.

Conclusion

This paper has looked at the question whether Canadian corporations have any role to play in realizing the objectives of the UNDRIP which the Canadian federal government has undertaken to adopt in the country's legal architecture. Through their indigenous relations policies, a range of Canadian businesses while not usually referencing the UNDRIP, pledged to take action to improve their relationships with indigenous communities within or near where their businesses are located. Some of these corporations would want to do more in this regard. However, they are stalling because, according to them, they are waiting for the government to provide further guidance on what is required of them to ensure effective implementation of the UNDRIP in Canada.

It seems Canadian corporations understand that their contributions would be crucial to implementing the UNDRIP either by submitting to government regulations or taking voluntary steps of their own. The corporations recognize the risk to their businesses if they do not improve relations with indigenous communities hosting them. The challenge has been in coming to an agreement on what standards are necessary in specific UNDRIP requirements. This is more so in fashioning the exact parameters of free, prior and informed consent that is a requirement for commencing projects in indigenous communities if adverse impacts are anticipated from such projects.

Canadian corporations studied in this paper have taken necessary first steps in crafting indigenous relations policies. Whether those policies are effective is beyond the scope of the paper. One thing is clear. The contents of the corporate indigenous relations policies considered in this paper adopt UNDRIP principles and goals to varying levels of importance. It means therefore that there is no controversy whether those corporations want to implement the requirements of the UNDRIP. What is controversial is when those corporations adopt voluntary policies like the

UNDRIP but oppose government efforts to put those commitments down in enforceable legislations.

Corporations that intend to be taken seriously in their indigenous relations practices should be proactive in applying the UNDRIP whether as a voluntary undertaking or by supporting legislative initiatives in this regard. A respectable starting position would be to make explicit commitments to implementing the UNDRIP as for example by stating so in their indigenous policy documents. Also given how controversial the issue has turned out to be, what is free, prior and informed consent in the context of businesses conducted on indigenous lands should be clearly articulated. Indigenous communities tend to see current FPIC procedures as working towards an answer and limiting their inputs on a level playing field. On the other hand, corporations are fearful of proposed laws whose provisions they interpret as arming indigenous peoples with veto powers over resource development projects. There must be a middle ground somewhere that addresses these conflicting interpretations.