



CANADA

Cultural Rights of First Nations and Climate Change

Submission to:

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Via email: srculturalrights@ohchr.org

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Introduction:

The British Columbia Assembly of First Nations (BCAFN) is a Provincial Territorial Organization (PTO) representing the 203 First Nations in British Columbia. BCAFN is one of ten regional organizations affiliated with the national Assembly of First Nations whose members include 633 First Nations across Canada.

“First Nations” is a broad term describing Indigenous peoples in Canada, alongside the Metis and Inuit peoples. First Nations are diverse, representing many different languages, cultures, and systems of law and governance. In legal contexts, the term “Aboriginal peoples of Canada” refers to all First Nations, Metis and Inuit peoples, whose rights are constitutionally protected.

BCAFN has the mandate to advance the rights and interests of First Nations people in British Columbia (BC); restore and enhance the relationship among First Nations people in BC, the Crown and the people of Canada; develops and promotes programs and policies for the benefit of First Nations people in BC; works in coalition with other organizations that advance the rights and interests of indigenous peoples and take direction from the Chiefs-in-Assembly according to the resolutions passed at Assemblies.

I. Negative impacts of climate change on culture and cultural rights

Question 1.

- The negative impacts of climate change disproportionately impact Indigenous peoples in diverse settings across Canada, including in what is now called British Columbia (BC), where more than two hundred First Nations continue to live and hold Aboriginal Rights and Title. Canada has warmed about double the magnitude than the rest of the globe. Significant warming is already evident, especially in winter. BC has warmed an average of 1.4°C in the last century. In northern BC, the average temperature increased between 3.0 to 3.8°C in winter.
- In BC, the effects of the warming climate include less extreme cold, shorter snow and ice seasons, earlier spring arrival, rising sea levels, and more extreme heat. As a consequence of some of these effects, extreme flooding, fires and droughts are the new normal, which primarily devastate First Nations communities and small towns located in rural areas.
- According to the BC government, in the last three years more than 2.6 million of hectares of land burned across BC.
- In the early 2000s, the Mountain Pine Beetle infestation affected approximately 18.3 million hectares of forest in BC and continues to have significant negative effects on provisioning services (water supply and food production) and cultural services, both which threaten the emotional, physical, and cognitive wellbeing of First Nations. The infestation’s epidemic proportions were exacerbated by warmer winters, which allow for more pest survival.
- These climate related events, together with environment degradation from economic activities, cause the loss and disturbance of animals, plants and watersheds, and affect First Nations’ ability to live according to reciprocal relationships with the natural world, upon which our unique worldviews, legal orders, and cultures are founded.
- Climate change-affected species decline and extirpation (such as moose, caribou, elk, and salmon) destroy our ability to exercise our inherent and, in Canada, constitutional rights to fish, hunt and gather for food, social and ceremonial purposes. As Chief Byron Louis of the Okanagan Nation states, “the loss of a species is equivalent to the extinguishment of a right.”

Cultural rights become meaningless when their effective exercise is prevented by the impacts of climate change.

- Climate impacts are also threatening our intangible cultural heritage such as our traditional knowledge, practices and skills. What our Elders know as normal is changing dramatically around us. Our ties to our territories and resources and our teachings about how to responsibly steward our lands and waters are threatened when the health of our territories is threatened.
- Evacuations orders from fires and floods force First Nations to move away from their territories, and often without culturally appropriate assistance and support, and especially impact Elders, women and those with special needs.
- In some First Nation communities, the loss of homes to wildfires is exacerbated by the lack of normal house insurance policies “on reserve” because of outdated, patriarchal federal Indigenous policy, and the general poverty of our communities. The federal bureaucracy is also ill equipped to enable rebuilding efforts to occur, so when homes are lost, there are a myriad of challenges to begin restoration and rebuilding efforts.
- Women, elders, youth and future generations are particularly vulnerable to these losses. Canada’s national shame of the disappearances and deaths of Indigenous women and girls has been linked with “man-camps” of resource development mega-projects such as tar sands, natural gas fracking, and pipelines, which are all drivers of climate change.

Question 3.

- In Canada and BC there is no governmental process that analyzes or assesses specific impacts on culture or an inventory of cultural sites affected by climate change. However, many First Nations in BC have been assessing the impacts and potential impacts to their culture, ceremonial sites and cultural rights posed by climate change through risks assessment as part of community Adaptation Plans. There is no register of all these community-led initiatives or secure source of funding for First Nation communities to develop Adaptation or Mitigation Plans.
- A recent First Nations’-designed and led climate change survey in BC, hosted by the BCAFN and its partners in the First Nations Leadership Council in 2019, engaged with 139 First Nations and Tribal Councils across all eight regions of British Columbia. Almost half of the respondents affirm that they cannot access their sacred and cultural sites, and two principle reasons were identified:
 1. The cultural sites have disappeared or been damaged because of extreme heat, rain and wind; fires, floods, erosion (including coastal erosion), landslides; overland flooding due to hydrophobic soil conditions as a result of the fires; droughts that caused sacred creeks disappeared, low flow of the rivers and creeks affecting fish populations.
 2. Sacred and cultural sites continue to exist but cannot be accessed anymore because severe events have changed the landscape: too much snow, erosion, flooding, degradation of ecosystems. The weather plays a big role in First Nations travels. Two respondents stated:
 - *“Lower water levels at key times of years make access along river harder. Members have also noticed a decrease in number of 'safe' days to travel along river in winter months; change in ice amount and quality of ice”*
 - *“Water levels are too high and dangerous to maneuver through, when we were once able to walk to them”*

- In BC, resources that are critical to First Nations' participation in cultural life have been severely affected by climate change such as:
 - Salmon. Climate change, and its associated changes to hydrology, ocean and inland water temperature, ocean productivity, and natal habitat, are negatively influencing salmon productivity. According to Fisheries and Oceans Canada, 2019 demonstrated another year in a decades-long decline in Pacific Salmon stocks. The Federal Department adjusted the estimated number of returning Fraser River sockeye salmon from nearly five million to 600,000. The loss of salmon has a tremendous impact on First Nations, not only in terms of food security, but also because of these species' deep social and cultural value.

"I think the loss of the social culture of getting the salmon together has had adverse effects. Everyone has a role and participates in processing salmon for their families and ultimately the community. If one family fares better than another, they automatically provide for those families who need help. Everyone looks forward to the togetherness and reconnecting with one another because sometimes it's the only time that they are together."
 - Four leg animals have declined. Migration routes have all been affected due to the lack of food and viable habitat. Our ability to hunt is threatened by climate change which in turn impacts First Nations' ability to pass on cultural teachings from older generations to younger generations, including indigenous languages, traditional laws and customs.
 - Medicinal and ceremonial plants and trees have been affected by fires, heat waves, droughts and floods, as well as by invasive non-native plant species, which negatively affect the ability of First Nations' use of these plants for cultural purposes.
 - *"Due to fire burning the area and trees that covered the sites, berries and vegetation never returned"*
 - *"The River and Salmon are the back bone of Kwantlens' Culture. Being on the river and being connected to its traditional use and cultural practices is increasingly limited due to lack of fish and warmer waters"*
 - *"The drought and heat have made our plants produce little, poor kelp returns we had no roe-on-kelp"*
- Responses of the survey also identified human activities (e.g. mining, gas, oil, logging, urban and industrial development, pipelines, tourism, road access, discharge of effluents damage clam gardens, etc.) as a cause of their cultural sites being unavailable.

II. Positive potential of culture and cultural rights to enhance responses to climate change

Question 4.

- There are many examples in BC where First Nations has been using their Indigenous knowledge to mitigate and adapt to climate change, although there is no specific, dedicated effort or funding from the Provincial or Federal Governments to enable all First Nations to undertake climate change mitigation or adaptation actions using culture and cultural resources. Unfortunately, there are not enough efforts by BC to inventory and preserve First Nations cultural resources that could help address climate change.
- An example of community-led efforts is the Revitalizing Cultural Burning project coordinated by the First Nations Emergency Services Society (FNESS), in participation with three First Nations in BC, the Shackan Indian Band, Xwisten (Bridge River) First Nation and Yunesit'in Government. According to FNESS, the project broadens learning opportunities about cultural burning revitalization to strategic partners such as the provincial and federal government, and as stories/case studies on (i) advancing cultural burning revitalization in relation to

reconciliation, wildfire prevention and risk reduction, and climate change adaptation; and (ii) enhancing holistic knowledge and observations of wildfire management to inform climate change adaptation planning for First Nations communities of similar scale and needs.

Question 5

- At the international level, efforts to integrate Indigenous Peoples and Indigenous Knowledge in political processes and negotiations have increased in the last decade. At the United Nations Framework Convention on Climate Change (UNFCCC), the Local Communities and Indigenous Peoples Platform (LCIPP) has the purpose of exchanging experience, sharing knowledge, and accelerating the inclusion of Indigenous Peoples (and local communities) within the UNFCCC. The work plan for the LCIPP (approved at the COP 25), is an important step in advancing First Nations consideration in the international climate regime.
- Furthermore, in UN Working Group discussions on Article 8j of the Convention on Biological Diversity (CBD), Indigenous peoples are advocating for the adoption of a human rights approach to conservation and climate change adaptation/mitigation. This includes the application of the *United Nations Declaration on the Rights of Indigenous Peoples* and the recognition of the right to self-determination
- Indigenous self-governance and land rights are essential to upholding cultural rights and responding to climate change. The IPBES Report and other evidence shows that Indigenous peoples with secured land and water rights coincide with areas of enhanced biodiversity, conserved forest and marine areas, carbon sequestration, and markers of biological health.
- In Canada, conservations efforts are driven by the Federal Government’s international commitments under the CBD, including the establishment of the federal *Species at Risk Act* (SARA), and more recently, efforts to protect 25% of marine and land mass by 2025 in what is known here as the “Pathway to Canada Target 1”. The SARA is the only piece of federal legislation that explicitly recognizes the critical role of Indigenous Peoples in the administration and implementation of the Act through the establishment of the National Aboriginal Council on Species at Risk (NACSOAR) and the First Nations Advisory Committee on Species at Risk (FNACSAR). As part of the Pathway to Canada Target 1, the Federal Government has directed efforts for the conservation of terrestrial and inland waters through the establishment of networks of protect areas, including Indigenous Protected and Conserved Areas (IPCAs).
- IPCAs support Indigenous knowledge holders and peoples as leaders in conservation while maintaining and strengthening our distinct cultures and relationships with our lands and waters. In addition, derived from an Indigenous worldview, IPCAs can be leveraged as comprehensive solutions that can support First Nations with their sustainable development and cultural/health restoration goals. To date, approximately 27 IPCAs have been created and recognized in Canada.

Challenges and Barriers to Indigenous Governance on Climate Change

- At the national level, the inherent and treaty rights of the Aboriginal peoples of Canada are protected by section 35 of the Constitution. These rights include rights of self-governance and Aboriginal title to our territories, yet Aboriginal peoples still have to fight for recognition of our distinct legal orders and governance institutions and to be included in decisions that affect our lands and peoples.
- The federal and provincial governments treat Indigenous peoples as stakeholders instead of nation-to-nation partners, using our cultural knowledge while denying our rights to self-governance and governance within our territories. Indigenous knowledge cannot be divorced

from the legal and governance institutions that operationalize it. Only by exercising our full inherent jurisdiction over our lands and waters, which we have never surrendered, can we implement the knowledge and practices by which we have stewarded our territories for millennia.

- One of the ways that Indigenous peoples' cultural and governance rights are denied in Canada is through the reserve system. Indigenous peoples were forcibly transitioned from their governance institutions to elected band systems on reservations under the federal *Indian Act*. Reserves currently account for 0.2% of the entire land base in Canada – a tiny fraction of our territories. The federal and provincial governments continue to deny that First Nations have jurisdiction across our territories.
- In the Province of BC, the 2019 *Declaration on the Rights of Indigenous Peoples Act* created a legal mandate for the provincial government to align its laws with the minimum standards articulated in UNDRIP. All BC laws that affect Indigenous peoples and territories will need to be aligned with UNDRIP's Articles. This includes economic, cultural, and decision-making rights on our territories. Article 25, the right to maintain and strengthen our distinct spiritual relationships with our territories and to uphold our responsibilities to future generations in that regard, is of particular interest in the intersections of climate change and our cultural rights.
- The government of Canada, after a national UNDRIP bill failed in summer of 2019, currently has a mandate to table a new UNDRIP bill by the end of 2020. Indigenous peoples are involved with the development of the federal bill through the national Assembly of First Nations, but much more engagement is needed to ensure the federal legislation is meaningful and effective.

III. Measures taken and recommendations

Question 8.

- BC is known as Canada's Province with more advanced legislation and policies related to climate change. However, the provincial climate change plans developed by the Province, such as the CleanBC plan, the Provincial Climate Risk Assessment and the amendments to the Climate Change Accountability Act, were prepared without meaningful engagement or participation of First Nations or representative organizations. As a result, there is a lack of Indigenous perspectives (vision, needs, barriers and priorities) in the provincial response to climate change.

To address this failure to date, the Province committed to working in collaboration with Indigenous peoples to implement the CleanBC plan and to include Indigenous perspectives in future climate plans, such as the Climate Preparedness and Adaptation Strategy. Efforts in this regard has led to the creation of a Technical Working Group on climate change between the BC government and First Nations organizations, including BCAFN. Further, the Province has hosted different sessions to engage First Nations and established an Indigenous Climate Adaptation Technical Working Group to engage Indigenous peoples on the provincial Climate Preparedness and Adaptation Strategy.

All these new measures are important steps in line with the goal of incorporating First Nations' engagement in provincial climate policy development, but their effectiveness will depend in both the capacity of First Nations to fully engage and the steady commitment by the government to support the engagement, including financial support, and the commitment to implement the outcomes of the engagement and respect and recognize First Nations' rights, title and treaty rights as a key component of planning and policy.

Question 9.

- Canada's resource extraction industry is a major contributor to global climate change and mega-projects are associated with the violation of human and Indigenous rights. In January 2020, the UN Committee on the Elimination of Racial Discrimination called for the suspension of three projects in BC alone: the Trans Mountain Pipeline Expansion, the Site C Hydro-electric Dam, and the Coastal GasLink LNG Pipeline. The Committee was disturbed by the lack of free, prior and informed consent of Indigenous peoples affected and by law enforcement's "forced removal, [and] disproportionate use of force, harassment and intimidation" of Indigenous land and culture defenders asserting their rights within their territories.
- In 2020, Wet'suwet'en Hereditary Chiefs peacefully occupying their territories at the Unist'ot'en Healing Centre were intimidated, threatened, and forcibly removed/arrested by Canada's national police force, the Royal Canadian Mounted Police (RCMP). The Unist'ot'en Healing Centre lies in the path of a proposed Coastal GasLink natural gas pipeline. The RCMPs' arrests of the Chiefs, many of whom were women and Elders, took place after a BC court granted an injunction to Coastal GasLink.
- The international community must do more to condemn the forcible removal of Indigenous peoples from their territories in direct violation of basic human rights and the *United Nations Declaration on the Rights of Indigenous Peoples*.
- Court injunctions, used as a legal device deployed against Indigenous peoples who peacefully oppose developments on their territories, must come to an end. A movement at the international, national and provincial levels to end injunctions for private companies against Indigenous land defenders could help to protect these defenders.

Question 10.

- The government of BC is developing a Climate Preparedness and Adaptation Strategy. The strategy, according to the government, will help ensure we're ready to reduce risks and be prepared for the impacts of climate change. To inform the adaptation strategy the Province has completed a Preliminary Strategic Climate Risk Assessment, which examined 15 climate risks and their potential consequences in 2050.
- Climate change threatens First Nations, their livelihoods, traditions, culture, knowledge and way of life. Despite this fact, the provincial risk assessment failed to include the impacts and consequences of the 15 climate risks on First Nations as a population with unique challenges, barriers, needs and priorities, as well as a unique way of life and relationship with traditional lands and waters. Due to this omission, BC does not have the foundation to prepare and design strategies for adaptation actions and allocation of resources for First Nation governments and First Nation citizens. Moreover, the impacts of certain risk events mean something very different for a community of people who will be much more reluctant to (or simply will not) abandon ancestral lands and waters.
- The risk assessment also fails to recognize First Nation Governments as having jurisdiction and responsibilities to their citizens and communities, and the related challenges and impacts that come with these responsibilities.

Question 14.

1. The processes and impacts of climate change, species loss, habitat destruction, and other environmental degradation are interconnected, and the response to them must be coordinated

in a holistic and multidimensional approach. Indigenous peoples' legal orders and worldviews understand ecology as a living whole. Interconnected issues cannot be siloed if they are to be effectively addressed.

2. Similarly, a holistic approach must be taken to design strategic policies to adapt and build resilient First Nations communities. Challenges cannot be looked at in isolation and pre-existing social, political, economic, and environmental realities have to be taken into consideration. Furthermore, a human rights-based approach is also imperative to move the discussion out of the economic and technical debate.
3. Our ways of life, that include our cultural rights and traditional knowledge, have to be protected as the most important way to address climate change. Any risk assessment conducted by governments or other sectors must assess the consequences of the risk to the ways of life of Indigenous peoples, including cultural rights and traditional knowledge.
4. First Nations must be full partners with all levels of government, internationally and domestically, in all strategies towards climate change adaptation and mitigation, species loss prevention, conservation and sustainable use. Governments must provide all the support needed by First Nations to develop and implement their own strategies to address climate change, and in doing so, exercise their rights to self-determination.
5. First Nations must retain full ownership over their intellectual property, including traditional ecological and cultural knowledge, used in climate and conservation strategies.
6. All governments must ensure that suitable records are being kept of climate risk and impacts on specific natural resources and local sites used for cultural practices which influence the ability to participate in diverse aspects of cultural life. Similarly, cases where Indigenous knowledge and cultural practices are used to mitigate and adapt to climate change should be registered. Both should be done in a manner that protects the intellectual property and confidential nature of some Indigenous knowledge. This is important to showcase the risks to, opportunities for and leadership shown by First Nations.
7. Integrated Indigenous management strategies for sustainable use of the land and conservation must be at the forefront of the international implementation of the Convention on Biological Diversity.
8. Securing Indigenous land and governance rights is directly linked with enhanced biodiversity outcomes. Indigenous-led action on climate change and conservation requires support for and recognition of Indigenous laws and governance institutions that operationalize Indigenous management strategies.