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The International Right to Health for Indigenous Peoples in Canada

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Table of Contents

Executive Summary

The United Nations framework of treaties and covenants guarantees equality rights, self-determination of peoples, respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, religion and conditions of economic and social progress and development.[1] These are basic rights that all human beings share.

Health is also a basic human right, appearing in a variety of United Nations instruments or conventions that comprise the United Nations framework of rights. The right to health includes the right to health care and encompasses the right to a culturally appropriate health care system. As with other human rights, the right to health is particularly concerned with the disadvantaged and the vulnerable while confirming standards of equality and non-discrimination. State obligations to fulfill the right to health are monitored by human rights bodies.

Canada, as signatory to a number of international treaties and covenants, has acknowledged the importance of health to the well-being of Indigenous peoples[2] and recognized Indigenous peoples have a right to health in international law. Domestically, Canada has formally entrenched existing Aboriginal and treaty rights (which, arguably, includes the right to health) in Canada's Constitution.[3] The difficulty lies in the fact that the health status of Indigenous peoples in Canada (who, at a minimum, are entitled to the same standard of health and delivery of health services as all other Canadians) continues to fall well below that of the general population. Clearly, Canada's international and domestic obligations are not being fulfilled.

Introduction

In 1946 the World Health Organization (WHO) adopted a broad definition of health, transforming the analysis of health from an "absence of disease" model to one that encompasses "[a] state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[4] The emergence of the WHO definition "defined an integrated approach linking together all the factors related to human well-being, including physical and social surroundings conducive to good health."[5]

Indigenous peoples have always understood and practiced an integrated approach to health. The centrality of health to the total well-being of Indigenous peoples in Canada is summarized by the Royal Commission on Aboriginal Peoples (RCAP):

> In the imagery common to many Aboriginal cultures, good health is a state of balance and harmony involving body, mind, emotions and spirit. It links each person to family, community and the earth in a circle of dependence and interdependence, described by some in the language of the Medicine Wheel. In non-Aboriginal terms, health has been seen primarily as an outcome of medical care. But we are quickly learning that any care system that reduces its definition of health to the absence of disease and disability is deeply flawed.[6]

By all health status indicators, Indigenous peoples in Canada suffer a disparaging health status compared to the non-Indigenous population.[7] For instance, the life span of First Nations and Inuit is five to ten years less than the Canadian average.[8] Inuit infant mortality rates are triple the Canadian average. Suicide rates for on-reserve First Nations people are twice the national rate, while the Inuit rate is six times the national rate.[9] Indigenous peoples in Canada also suffer a greater incidence of ill health throughout their lifespan when compared with non-Indigenous Canadians. This is evidenced by higher rates of chronic and infectious diseases as well as obesity among Indigenous people. The prevalence of diabetes among First Nations is three times the national average[10] and the tuberculosis rates for Inuit are three times higher than First Nations and seventy times the rate of non-Indigenous Canadians.[11] This inequality in health status is difficult to reconcile with the fact that the right to health is part of the broader scope of human rights validated by both the United Nations and Canada (as signatory) through various international instruments.

Canada has ratified a number of United Nations (UN) treaties that confirm the human rights of its citizens, including the right to life.[12] Article 6 of the International Covenant on Civil and

Political Rights (ICCPR) states "[e]very human being has the inherent right to life."[13] According to the United Nations Human Rights Committee, the right to life is "the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation."[14] Although the right to life is often equated with protection against arbitrary deprivation of life, the General Comment of the Human Rights Committee notes "[i]t is a right which should not be interpreted narrowly."[15] The Human Rights Committee interprets the right to life as requiring States to undertake positive measures to ensure the broadest possible protection of this right.[16]

Through the signing of the Charter of the United Nations,[17] Canada agreed to promote human rights and to solve international health problems.[18] In agreeing to the Constitution of the World Health Organization (1946), Canada promised to seek "the enjoyment of the highest attainable standard of health [as] one of the fundamental rights of every human being."[19] Canada has also affirmed the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health,"[20] and accepted that recognition of the right to health is accompanied by the corresponding establishment of a legal obligation to fulfill this right.[21]

This paper will examine the right to health in international law and will demonstrate the significance of international laws for protecting and advancing the right to health of Indigenous peoples in Canada. Part I will discuss the significance of a rights-based approach to health. Part II will provide an overview of relevant instruments and international processes in which Indigenous peoples are participating. Part III will look at the relationship between the environment and health. Canada's obligations to implement the right to health for Indigenous peoples based on international law will be considered in Part IV.

1 Significance of a Rights-Based Approach to Health

A rights-based approach is important when examining a right to health. Distinguished legal scholar Virginia Leary states that there are many international instruments and agreements that recognize this right, although the specific 'right to health' language varies.[22] For instance, the Alma Ata Declaration on Primary Health Care provides that "[t]he people have the right and duty to participate individually and collectively in the planning and implementation of their health care."[23] Leary notes that human rights and health care are intertwined; "[p]articipation of individuals and groups in matters that affect them is essential to the protection of all human rights."[24]

Not only is the principle of equality critical to understanding the rights perspective in the context of international law, but equal treatment is the fundamental basis of all human rights. This is affirmed through several international agreements. For instance, the Universal Declaration of Human Rights (UDHR) refers to "the dignity and worth of the human person and the equal rights of men and women."[25] Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes "… the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[26] Article 10 of the Additional Protocol of the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) states that "(1) Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social-well being. (2) In order to ensure the exercise of the right to health, the State Parties agree to recognize health as a public good."[27] Article X1 of the American Declaration of the Rights and Duties of Man provides: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care …"[28]

Similarly, a right to non-discrimination in relation to health is identified in several international instruments. The WHO describes non-discrimination requirements:

> In relation to health and health-care the grounds for non-discrimination have evolved and can now be summarized as proscribing 'any discrimination in access to health care and the underlying determinants of health, as well as the means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.[29]

The WHO's reference to non-discrimination requirements is reflected in Article 5(e)(iv) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) which states that "States Parties undertake to prohibit and to eliminate racial discrimination … in the enjoyment of … the right to public health, medical care, social security and social services."[30] Article 11(1)(f) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) refers to women's health and non-discrimination, stating that "State Parties shall take all appropriate measures to eliminate discrimination against women … in particular … the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."[31] The CEDAW also confirms that adequate maternal and child health care is a matter of human rights.[32]

All rights are interconnected, depending upon other rights for strength, support and ultimately, their fulfillment. In 1993, at the World Conference on Human Rights held in Vienna, the following statement was made:

> All human rights are universal, indivisible and interdependent and interrelated. The International community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.[33]

Leary suggests that "the right to health cannot be effectively protected without respect for other recognized rights."[34] Jonathan Mann, a human rights activist, elaborates:

> The central idea of the health and human rights movement is that health and human rights act in synergy. Promoting and protecting health requires explicit and concrete efforts to promote and protect human rights and dignity, and greater fulfillment of human rights necessitates sound attention to health and to its societal determinants.[35]

The health and human rights movement has now made it clear that "a human rights perspective requires a view of health that takes seriously its connections to social conditions such as poverty and discrimination."[36] Similarly, "[w]hen health is understood to include physical, mental, and social well-being, it seems reasonable that the violation of any human right would impact adversely on health."[37] Further, human rights are interdependent on each other as well as being inextricably linked to the right to a healthy environment. "Health is a fundamental human right indispensable for the exercise of other human rights"[38] that includes other basic

human rights including the right to food, the right to adequate housing, the right to education, the right to work and rights at work, the right to life, the right to information, the right to physical integrity, the right to be free from discrimination on any ground, including gender, race, religion, sexual orientation, disability and the right to self-determination.

2 The International Right to Health for Indigenous Peoples

The following section outlines the international instruments that Canada has signed and Canada's status as to ratification.

2.1 United Nations Working Group on Indigenous Populations

The Working Group on Indigenous Populations (WGIP) was established in 1982 and has provided a yearly forum for Indigenous peoples to assert and discuss international rights, including the right to health.[39] This forum's ease of accessibility makes it a viable tool for Indigenous peoples to advance their rights. The Office of the United Nations High Commission for Human Rights describes the WGIP:

> The Working Group is the most important UN body for Indigenous peoples. It provides an opportunity for Indigenous peoples from all over the world to get together to share their experiences, to join in solidarity in confronting common challenges, and to register their concerns at the UN. It is vitally important that Indigenous peoples take advantage of the opportunities the Working Group offers.[40]

The WGIP's agenda relates to two principal areas, the "Review of Developments" and "Standard Setting". The WGIP reviews developments concerning the promotion and protection of human rights and fundamental freedoms of Indigenous peoples as well as the evolution of international standards concerning Indigenous rights.[41]

In 1996, the WGIP selected health as a principle theme for its annual session[42] and noted the holistic nature included the spiritual, mental, emotional and physical health of Indigenous peoples.[43] The principle theme at WGIP's eighteenth session in 2000 was "Indigenous children and youth." Many health problems were enumerated in relation to Indigenous children and youth such as: poor health services; lack of health education; environmental degradation/ pollution; HIV/AIDS; teenage pregnancy; lack of culturally appropriate reproductive health education; rising rates of sexually transmitted diseases and soaring suicide and drug and alcohol abuse rates.[44] Most recently, in 2002, at the twentieth session of the WGIP, issues related to land, education and health were raised. There was also a call for a future session specific to health, and "[i]ssues relating to the rights of Indigenous peoples that were identified as matters of serious concern includ[ing]: the right to health …"[45]

The WGIP provides an arena for promoting the right to health as well as recommended steps to achieve this right and may be a valuable forum for providing information on important issues to Indigenous peoples.

2.2 Draft Declaration on the Rights of Indigenous Peoples

The Draft Declaration on the Rights of Indigenous Peoples was first drafted in 1985 by the WGIP. Although various revisions have since occurred, five articles currently refer to the right to health:

> Article 22:
>
> Indigenous people have the right to special measures for immediate effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.[46] (emphasis added)
>
> Article 23:
>
> Indigenous people have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous people have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.[47] (emphasis added)
>
> Article 24:
>
> They [Indigenous people] also have the right to access, without any discrimination, to all medical institutions, health services and medical care."[48] (emphasis added)
>
> Article 28:
>
> States shall take effective measure to ensure, as needed, that programmes for monitoring, maintaining and restoring health of Indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.[49] (emphasis added)
>
> Article 31:
>
> Indigenous peoples, as a specific form of exercising their right to self determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource

> management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.[50] (emphasis added)

If adopted, the Draft Declaration on Indigenous Peoples would provide Indigenous peoples with internationally recognized rights. However, despite bi-annual meetings held since 1995 to deliberate and consider the content of the draft declaration, only two of the forty-five articles have been adopted.[51] Although the Draft Declaration was to be adopted by the end of the International Decade of the World's Indigenous People in 2004, the lack of consensus on the remaining 43 articles has made this task difficult.[52] The Working Group on the Draft Declaration on the Rights of Indigenous Peoples (WGDD) held its ninth session from the 15th to the 26th of September 2003. The final session of the Working Group was held in September 2004, the WGDD must now present its final report to the Commission on Human Rights.[53]

2.3 Convention (No. 169) of the International Labour Organization

The International Labour Organization's (ILO)[54] Convention No. 169 Concerning Indigenous and Tribal Peoples[55] "provides an authoritative basis for identifying and differentiating indigenous and tribal peoples from other population groups."[56] Convention No. 169 requires the realization of economic, social and cultural rights for Indigenous peoples:

> [G]overnments must assume responsibility for developing coordinated actions, with the participation of the Indigenous peoples, to protect the latter's rights and guarantee respect for their integrity. These must include measures to ensure that they enjoy the same rights and opportunities as all other members of the population, on an equal basis. They must also promote the full realization of the ESC [economic, social and cultural] rights of these peoples, and help eliminate socioeconomic differences. Furthermore, articles 4 and 5 require states to adopt special measures to safeguard the persons, institutions, property, work, cultures and environment of Indigenous peoples, and to ensure that their social, cultural, religious, and spiritual values and practices are recognized and protected.[57]

Canada is a member of the OAS but has not ratified the ILO Convention No. 169, although seventeen other countries have ratified it.[58] In the Declaration of the Indigenous Peoples Summit of the Americas (2001), the representatives of Indigenous peoples, nations and organizations from North, Central and South America and the Caribbean commented on the Organization of American States (OAS) and the ILO:

> All member States of the OAS who have ratified the ILO Convention 169 must comply with it and fully implement it, and member States who have not done so, must ratify this Convention …[59]

> Efforts must be made to improve upon this Convention in the future, without prejudice to national and international measures, which may exceed the standards set out in this Convention.[60]

2.4 International Decade of the World's Indigenous People

In 1993, following a recommendation by the World Conference on Human Rights,[61] the General Assembly of the UN declared the International Decade of the World's Indigenous People (the Decade). Commencing in 1995 and ending in 2004, the theme of the Decade is "Indigenous People: Partnership in Action." Its goal is "to foster international cooperation to help solve problems faced by Indigenous peoples in such areas as human rights, culture, the environment, development, education and health."[62] The main activities of the Decade include:

> The adoption of the Draft Declaration on the Rights of Indigenous Peoples;
>
> The establishment of a Permanent Forum on Indigenous Issues;
>
> Promotion of technical cooperation and mainstreaming of Indigenous issues within UN human rights projects and programmes;
>
> Creation of an Indigenous fellowship programme to assist Indigenous individuals who want to gain experience working in the UN system; and
>
> Establishment of the United National Trust Fund for the International Decade of the World's Indigenous People. [63]

The UN General Assembly recommended that evaluations occur in 1999 and 2004 on the effectiveness of the Decade on the daily lives of Indigenous peoples. The 1999 Report of the Secretary-General on the Decade (Report) was the first of these evaluations and notes that the World Health Organization had adopted a resolution to consult with Indigenous people to "increase its attention to the health needs of Indigenous populations in a comprehensive and systematic way,"[64] with "an overall strategy and programme of work for the Decade."[65] The Report also noted that the World Health Organization has established permanent communication with an Indigenous health committee[66] and has increased involvement of Indigenous peoples in its Substance Abuse Department, Non-communicable Diseases Cluster (such as diabetes in Indigenous communities), the Tobacco Free Initiative, the Traditional Medicine Team (which has produced guidelines for traditional health practitioners and primary

health care providers) and the Joint UN Programme on HIV/AIDS (including a database on AIDS and Indigenous peoples).[67]

In 1999, the World Health Organization published a report highlighting major health issues affecting Indigenous peoples. The report noted the Pan American Health Organization's (PAHO) adoption of the Health of Indigenous Peoples Initiative (1993) "the principles of which were reaffirmed in June 1997."[68] The WHO report also refers to the United Nations Development Programme (UNDP) and the United Nations Population Fund (UNFPA).[69] Both the UNDP and UNFPA included Indigenous peoples and communities in their respective workplans. The UNDP, for example, supports and strengthens Indigenous communities and organizations in order to make progress in the areas of poverty eradication, employment and sustainable livelihoods, gender equity, good governance and the sustainable management of the environment.[70] In 1999, the UNDP reviewed its operations and held a consultative meeting with Indigenous peoples entitled *Indigenous Peoples and UNDP: Strengthening Our Partnership*.[71] The goal of this meeting was "to renew and deepen the UNDP's partnership and engagement with Indigenous peoples, their organizations and their communities."[72]

The UNFPA's efforts to reach the objectives of the Decade of the World's Indigenous People were referenced in the United Nations General Assembly's 1999 Report:

> UNFPA has developed a two-prong strategy in order to assist indigenous peoples. As part of its focus on reproductive rights of the most vulnerable population groups, UNFPA finances and executes projects in poor areas, both rural and urban, with the aim of expanding the community's access to basic social services, including education and reproductive health. UNFPA also implements a series of national and regional projects targeted specifically towards indigenous peoples, in particular in Latin America and the Caribbean.[73]

In spite of these initiatives, it appears that Indigenous peoples have recognized the limitations of the Decade on their rights in general. Indigenous representatives of the WGIP commented on the Decade at its twentieth session in 2002:

> Some Indigenous peoples also stressed the importance of indigenous knowledge and wisdom in realizing the goals of the Decade, as well as the importance of empowering the civil society, particularly young indigenous peoples.[74]

Many Indigenous people argued for a second Decade and called for an increased awareness of Indigenous issues as well as for the recognition of the utility of human rights to economic and

social development. In this regard, the future work of the Decade may focus more on the monitoring of international aid projects and on full participation of Indigenous peoples through Indigenous empowerment.[75]

In its nineteenth session, the WGIP reported that the most suitable approach to culminate the International Decade would be for the UN to convene a world conference on Indigenous peoples.[76]

2.5 Geneva Declaration on the Health and Survival of Indigenous Peoples

The Geneva Declaration on the Health and Survival of Indigenous Peoples (Geneva Declaration) was adopted by "the representatives of Indigenous communities, nations, peoples and organizations attending the International Consultation on the Health of Indigenous Peoples."[77] It acknowledges "the health and well-being of Indigenous peoples is overwhelmingly affected by factors outside the realm of health itself, namely social, economic, environmental and cultural determinants …[78] Although the Geneva Declaration is not binding on states such as Canada, it is a strong statement by Indigenous advocates at the international level on the link between the right of self-determination and the right to health of Indigenous peoples under international law.

2.6 Permanent Forum on Indigenous Issues

In April 2001, the United Nations announced the establishment of a Permanent Forum on Indigenous Issues (Permanent Forum).[79] The Permanent Forum was set up as a subsidiary organ and advisory body to the United Nations Economic and Social Council with a mandate to "address Indigenous issues related to economic and social development, culture, the environment, education, health and human rights."[80] Like the WGIP, the Permanent Forum offers a unique and open space where the voices and concerns, such as the right to health, of Indigenous peoples, are heard and documented at the international level.

The 2002 Report of the First Session of the Permanent Forum explains six overarching themes on which there was consensus between governments, Indigenous peoples and specialized agencies. Vice-Chair Mililani Trask provides a concise summary of the pressing health needs of Indigenous people:

> … underlying causes of poor health for indigenous people included colonization, homelessness, poor housing, poverty, lack of reproductive health rights, domestic

> violence and addiction. Health care should be envisaged from an indigenous perspective, which encompassed mental, physical and spiritual health. There was a direct relationship between land use and indigenous health. Indigenous women and children had special needs, including expanding immunization and combating domestic abuse and addiction.[81]

2.7 Appointment of a Special Rapporteur

An important UN mechanism for the advancement of Indigenous peoples' rights was the appointment of Mr. Rodolfo Stavenhagen as the "Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people."[82] The mandate of the Special Rapporteur is:

> To gather, request, receive and exchange information and communications from all relevant sources, including Governments, Indigenous people themselves and their communities and organizations, on violations of their human rights and fundamental freedoms;
>
> To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people; [and]
>
> To work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.[83]

In 2002, Mr. Stavenhagen visited and made reports on the situation of Indigenous peoples in Guatemala and the Philippines. In his report on Guatemala, the issue of health appears in three areas: institutional discrimination and health facilities; health service accessibility; and increased health programming and care for Indigenous mothers and children.[84] On May 21, 2004, Mr. Stavenhagen began his visit to Canada during which he discussed key issues relevant to Aboriginal people such as health, economic and social issues.[85] The mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people was recently extended for a further period of three years.[86]

3 The Environment and Indigenous Health

The holistic approach to health taken by Aboriginal peoples is similar to the WHO definition of complete health. Canada, as signatory to the United Nations instruments and treaties, confirms that it supports the human rights of its citizens, including the right to health. The connection of environment and health is vital to Indigenous people. Mann notes that the "physical environment is one of the key determinants of human health."[87] For Indigenous peoples, their relationship with the environment remains central to their beliefs, customs, practices and their unique spiritual and cultural connection to land. Chairperson-Rapporteur of the Working Group on Indigenous Populations, Erica-Irene Daes notes "it is difficult to separate the concept of indigenous peoples' relationship with their lands, territories and resources from that of their cultural differences and values." The relationship with the land and all living things is at the core of indigenous societies."[88] Sákéj Youngblood Henderson elaborates:

> The Aboriginal vision of property was ecological space that creates our consciousness, not an ideological construct or fungible resource …Their vision is of different realms enfolded into a sacred space … The sharing of space, then, is the meaning for all Aboriginal life.[89]

The link between self-determination, Indigenous participation, environmental and sustainable development as well as globalization is also reflected in the report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People:

> In 1995, UNDP issued draft guidelines for support to indigenous peoples, in which four fields of action are identified: cultural revitalization, improvement of living standards, preservation of natural resources, and economic and technological development … The UNDP "Policy of Engagement", adopted in 2001, underlines the main principles guiding the relationship with indigenous peoples and identifies five areas of support to indigenous peoples: participation, self-determination, conflict prevention and peace building, environment and sustainable development, and the effects of globalization.[90]

At the WGIP twenty-first session,[91] the impact of globalization on Indigenous peoples was recognized when the High Commissioner encouraged studies with respect to "the rights to food and adequate nutrition of Indigenous peoples and Indigenous peoples and poverty, stressing the linkage between their present general situation and their land rights and to develop further cooperation with the Food and Agriculture Organization of the United Nations and the World Food Program on Indigenous issues."[92]

In August and September 2002, the World Summit on Sustainable Development was held in Johannesburg, South Africa. The Johannesburg Declaration on Sustainable Development emerged from this meeting and addressed the responsibility of states "to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection."[93] Of particular significance was paragraph 25: "We reaffirm the vital role of the indigenous peoples in sustainable development."[94] This article specifically provides a place for Indigenous peoples in the implementation of the declaration. Here, for the first time, the UN "adopted the unqualified term 'Indigenous peoples' in its official political declaration ... [i]n stark contrast to the 2001 UN World Conference against Racism, held in Durban, South Africa, where the term 'peoples' was qualified as still being 'under negotiations'."[95]

The Program of Action of the World Conference against Racism made the following references to and linkages between health and the environment. It invites States,

> (a) To improve access to public information on health and environment issues;
>
> (b) To ensure that relevant concerns are taken into account in the public process of decision-making on the environment;
>
> (c) To share technology and successful practices to improve human health and environment in all areas;
>
> (d) To take appropriate remedial measures, as possible, to clean, re-use and redevelop contaminated sites and, where appropriate, relocate those affected on a voluntary basis after consultations.[96]

The Convention on Biological Diversity (CBD) is a UN convention that recognizes the unique heritage and knowledge of Indigenous peoples with respect to ecological and environmental systems. Drafted in direct response to the global realization that "[t]he Earth's biological resources are vital to humanity's economic and social development,"[97] the CBD was one of two binding agreements that came out of the U.N. Conference on Environment and Development or "Earth Summit" held in Rio de Janeiro in 1992.

The CBD states that each contracting party to the CBD shall:

> Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and

> promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.[98]

The CBD has been signed and ratified by more than 168 countries, including Canada,[99] in light of the "growing recognition that biological diversity is a global asset of tremendous value to present and future generations."[100]

It has long been known that a key determinant of health is the state of the environment. Many Indigenous people in Canada continue to depend upon the land for their livelihood, food, recreation and spirituality. Due to this close relationship with the land, the interaction between health and the environment is particularly important:

> Environmental degradation affects the health and well-being of Aboriginal people in three ways. First, pollutants and contaminants, especially those originating from industrial development, have negative consequences for human health. Second, industrial contamination and disruption of wildlife habitat combine to reduce the supply and purity of traditional foods and herbal medicines. Finally, erosion of ways of life dependent on the purity of the land, water, flora and fauna constitutes an assault on Aboriginal mental and spiritual health.[101]

Low socio-economic status as well as the remoteness of many Indigenous communities has increased their vulnerability to environmental destruction. Basic necessities such as adequate shelter, safe drinking water and sewage disposal remain elusive for many Aboriginal communities, increasing the incidence of infectious diseases and environmental contamination:[102]

> Environmental issues impact the health of Aboriginal Peoples disproportionately due to an increased reliance on, and contact with, the environment compared to Canadians in general. There also exists a reduced capacity to deal with these effects due to marginalization of Aboriginal Peoples within Canadian society.[103]

Additionally, the harvesting and refinement of natural resources and minerals as well as the creation of hydroelectric dams are common in the Canadian north and cause significant environmental disruption and damage borne mostly by Indigenous communities. It is clear that the international arena recognizes the detrimental effect that environmental policies and practices have had on Indigenous people although recognizing that biological diversity is a global asset of tremendous value to present and future generations."[104] The evidence demonstrates that the current environmental conditions faced by Aboriginal people in Canada both on and off reserve, continue to have a direct negative impact on physical, cultural and spiritual health.

4 Canada's Obligations to Implement the Right to Health for Indigenous Peoples in Canada

Despite the inclusion of health as a human right in many international instruments, debate continues as to the nature and scope of the right to health as well as the corresponding government obligations and the enforceability of the right to health. The Centre for Economic and Social Rights notes that "few attempts have been made to interpret in detail the rights to health or to a healthy environment; until uniform standards have been developed, violations must be judged on the basis of a minimum set of governmental duties necessary to make these rights meaningful."[105]

The Committee on Economic, Social and Cultural Rights confirms governments' obligations:

> (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
>
> (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
>
> (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
>
> (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
>
> (e) To ensure equitable distribution of all health facilities, goods and services;
>
> (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.[106]

The Supreme Court of Canada has made it clear that the Canadian government is responsible under international law for any breach of their international obligations.[107] The Standing Senate Committee on Human Rights (SSCHR) was formed to monitor and promote the

domestic implementation of international human rights treaties that Canada has signed and to improve the co-ordination of federal and provincial strategies to implement those treaties.[108] The SSCHR notes that international human rights obligations are "no less binding upon us than our domestic guarantees."[109] Moreover, Canada has an obligation to not only "submit to international scrutiny" but has an obligation to enact legislation that will implement these rights into domestic law.[110]

Ratifying states, including Canada, must take concrete steps towards the realization of the right to health:

> In Canada, international treaty commitments must be implemented through domestic legislation in order to have full force and effect within this country. Human rights treaties are not self-executing in Canada. Yet some of the requisite legislative action has not been forthcoming. In areas where there is a gap between Canada's domestic human rights protections and the international instruments it has ratified, this absence of implementing legislation means that Canada is not entirely fulfilling its international commitments and risks denying its people access to certain of their human rights. Moreover, Canadians and international human rights bodies have begun to notice this gap. This is clearly an embarrassing position for Canada as a nation having a well-deserved reputation as a leading nation in the field of human rights.[111]

The SSCHR report *Promises To Keep: Implementing Canada's Human Rights Obligations* states:

> We soon realized that one of the major issues needing to be addressed is the gap that has developed between our willingness to participate in human rights instruments at the international level and our commitment to ensuring that the obligations contained in these instruments are fully effective within this country. As this Report identifies, the growing discrepancy between Canada's international human rights obligations and the measures actually taken to implement them has the potential to be harmful to our human rights reputation, and to deny Canadians rights to which they are entitled.[112]

Canada through its violation of international law creates a noticeable gap between its international participation and its domestic failure to follow through on the implementation of those international obligations.

Article 12 of the Covenant on Economic, Social and Cultural Rights sets out a series of steps required to realize a right to health:

> 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

   (b) The improvement of all aspects of environmental and industrial hygiene;

   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.[113]

The importance of adequate, community-based, culturally appropriate health services is stressed through Article 25 of Convention No. 169:

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.[114]

Indigenous people in Canada are not only subject to the denial of human rights within Canada but colonialism has had a direct impact on their right to health. As noted by the Royal Commission on Aboriginal Peoples:

> Aboriginal peoples were systematically dispossessed of their lands and livelihood, their cultures and languages, and their social and political institutions … [T]his was done through government policies based on the false assumptions that Aboriginal ways of life were at a primitive level of evolutionary development, and that the high point of human development was to be achieved by adopting the culture of European colonists … [T]hese ethnocentric and demeaning attitudes linger in policies that purport to work on behalf of Aboriginal people while actually withholding from them the power to work out their own destiny.[115]

At the international level, Indigenous representatives at The Working Group on Indigenous Populations (WGIP) have observed the relationship between colonialism and health. At the fourteenth session, the WGIP observed:

> A number of Indigenous representatives were of the opinion that the health situation of Indigenous people could not be separated from the dispossession from lands and territories, the destruction of traditional, social and economic structures and denial of human rights indigenous peoples have faced in the past and were still facing. In that respect, an indigenous representative from Oceania stated that the dispossession of his people and the marginalization of and discrimination against the cultural heritage of his people made it obvious that the ill-health of his people was largely a by-product of the processes that had denied them their rights and freedoms over the past centuries.[116]

Referring to statements from the WGIP, it is clear that the overall health of Indigenous peoples has been severely impacted by colonization:

> Several Indigenous representatives referred to the impact the processes of colonization, marginalization and discrimination, and the resulting physical and socio-economic situation had on the mental health of indigenous peoples. In that regard an indigenous representative from North America stated that he had been requested by his community to tell the Working Group about a sickness that existed in his homeland, a sickness caused by colonization, oppression and militarization; he referred to a broken spirit, which manifested itself in alcoholism and suicide.[117]

The impact of colonial and post-colonial policies and practices that Indigenous peoples in Canada have been the subject of, is evidenced by the poor physical, spiritual, and emotional health of Indigenous peoples. When Canada fails to ensure that Indigenous people enjoy the highest attainable standard of physical, mental and social well-being both historically and contemporarily, human rights violations are compounded. Disproportionate levels of poverty and unemployment and over-incarceration are a few examples. For Indigenous peoples in Canada, the cycle of one human rights violation resulting in corresponding violations is evident.

Indigenous representatives consider a solution for the problem of the health situation of Indigenous peoples to be the restoration, promotion and protection of culturally appropriate, autonomous, holistic health-care systems.[118]

The Committee on the International Covenant on Economic, Social and Cultural Rights has identified some aspects of health, calling on states to allow Indigenous peoples to control the delivery of health services, while protecting their traditional knowledge and plants:

> In light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, the Committee deems it useful to identify elements that would help to define indigenous peoples' right to health in order better to enable States with indigenous peoples to implement the provisions contained in

> article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.[119]

Canada is the guarantor of its citizens' rights to health and has obligations to implement culturally appropriate health services. In 1976 when Canada ratified the UN human rights covenants, it affirmed human rights for all peoples within federal jurisdiction in Canada.[120] Consequently, not only does Canada have international obligations because Indigenous peoples in Canada are possessors of Aboriginal and treaty rights, a heightened responsibility occurs through section 35 of the *Constitution Act, 1982*:[121]

> The constitutional protection extended to Aboriginal and treaty rights stems from section 35 of the *Constitution Act, 1982*. Section 35 recognizes and affirms existing Aboriginal and treaty rights, as opposed to delegated or conferred rights, and implies that such rights owe their existence to inherent human rights. Human rights are the rights to which all human beings are justly entitled merely by virtue of their being human. (This approach to rights is known as a natural rights approach.) Consequently, according to the natural rights concept, each Aboriginal person equally possesses certain immutable rights by virtue of his or her Aboriginal rights. The Supreme Court has confirmed that it is the duty of a just government to protect these inherent rights.[122]

The Supreme Court of Canada has held that human rights are part of Canada's Constitution[123] and has further stated "where the text of the domestic law lends itself to it, one should also strive to expound an interpretation which is consonant with the relevant international obligations."[124] Patrick Macklem suggests that,

> We may be on the threshold of a new era of understanding the nature and scope of aboriginal and treaty rights – rights that are informed not simply by reference to historical circumstances specific to the aboriginal peoples of Canada but also to the evolving international legal status of indigenous peoples worldwide.[125]

Conclusion

This paper has illustrated that the right to health exists in international law and is vital for protecting and advancing the right to health of Indigenous peoples in Canada. Canada has accepted that recognition of the right to health is accompanied by the establishment of a legal obligation to ensure the fulfillment of this right.[126] In upholding its international and domestic commitments, Canada's health care system must necessarily include a holistic, culturally appropriate, and Indigenous-controlled model which recognizes Indigenous traditional health practices and ecological knowledge. This latter point is supported by the fact that a culturally appropriate definition of the right to health for Indigenous peoples includes "a more holistic view of health that reflects Aboriginal cultures and traditional ecological knowledge, and the generation of a variety of disease profiles, as health research becomes more closely oriented towards the social, spiritual, economic and political needs of specific communities."[127]

Indigenous peoples should have access to the same health rights as those enjoyed by non-Indigenous Canadians. However, Indigenous peoples in Canada have a health status that is despairingly lower than the health status of non-Aboriginal Canadians. It is clear that the international arena recognizes the detrimental effect that environmental policies and practices have had on Indigenous people and their poor state of health. The evidence demonstrates that the current environmental conditions faced by Aboriginal people in Canada, both on and off reserve, continue to have a direct impact on physical, cultural and spiritual health. Canada must recognize its obligations and act upon them, particularly those related to the environment and Indigenous health, if Indigenous peoples in Canada are to achieve the "highest attainable standard of physical and mental health."[128]

Notes

Law reporters, law reviews, treaty series, and UN bodies cited in the notes have been identified by the following abbreviations:

A.C.	Appeal Cases
Can. T.S.	Canada Treaty Series
D.L.R.	Dominion Law Reports
Dal. L.J.	Dalhousie Law Journal
GA Res.	General Assembly Resolution
Harv. Hum. Rts. J.	Harvard Human Rights Journal
I.L.M.	International Legal Materials
ILO	International Labour Organization
OAS	Organization of American States
S.C.R.	Supreme Court Reports
U.N.T.S.	United Nations Treaty Series
UN	United Nations
UN ESCOR	United Nations Economic and Social Council Official Records
UN GAOR	United Nations General Assembly Official Records
WHO	World Health Organization

1 See, *Charter of United Nations*, 26 June 1945, Can. T.S. No. 7 (entered into force 24 October 1945) at Art. 1, paras. 1–3, and Art. 55 [*UN Charter*]; See also, James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996).

2 The term "Aboriginal peoples" is intended to encompass all original inhabitants of Canada as recognized by the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 s.35 [*Constitution Act, 1982*] at s.35(2), meaning Indian, Métis and Inuit peoples in Canada. While it is acknowledged that reference to the Aboriginal peoples of Canada may not be the preferred or even the appropriate terminology for some Aboriginal people living on the border of Canada and the United States, this issue is important to recognize even though it is outside the scope of this paper.

The most common term in international law, "Indigenous peoples," will also be used and is intended to encompass these same groups. See, J.R. Martinez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations* (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), UN Doc. E/CN.4/Sub.2/1986/7/Add. 4 at 29, para. 379 [Cobo Report] for the definition of Indigenous peoples.

3 *Constitution Act, 1982*, *ibid*. See also, Yvonne Boyer, "Aboriginal Health: A Constitutional Rights Analysis". Discussion Paper Series in Aboriginal Health, No. 1 (National Aboriginal Health Organization and Native Law Centre of Canada, 2003) at 8 [Boyer].

4 *Preamble of the Constitution of the World Health Organization* as adopted by the International Health Conference, New York, 19–22 June 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, at 100) and entered into force on 7 April 1948 [*WHO*]. The organization's main objective is the "attainment by all peoples of the highest possible level of health."

5 Enrique González, "Circle of Rights, Economic Social & Cultural Rights Activism: A Training Resource, Module 14 The Right to Health," at para. 6, [González-Circle of Rights], online: University of Minnesota Human Rights Resource Center <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module14.htm>.

6 Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Vol. 3, *Gathering Strength* (Ottawa: Supply and Services Canada, 1996) at 152 [RCAP].

7 See, for example, J.A. Smylie, "Guide for Health Professionals Working with Aboriginal Peoples: Health Issues Affecting Aboriginal Peoples" (2000) 23 Journal of the Society of Obstetricians and Gynecologists of Canada 54; First Nations and Inuit Regional Health Survey National Steering Committee, *First Nations and Inuit Regional Health Survey, National Report, 1999* (First Nations, Regional Longitudinal Survey Steering Committee, 1999) and H.L. MacMillan, "Aboriginal Health" (1996) 155 (11) Canadian Medical Association Journal 1569; Canada, Health Canada, Report of the First Nations and Inuit Health Branch (FNIHB), *A Statistical Profile of the Health of First Nations in Canada* (Ottawa: Supply and Services, 2003) [*Statistical*].

8 Canadian Population Health Initiative, *Improving the Health of Canadians* (Ottawa: Canadian Institute for Health Information, 2004) at 80 [CPHI].

9 CPHI, *ibid.* at 81.

10 Canada, Health Canada, "Diabetes Among Aboriginal People in Canada: The Evidence" (Ottawa: 2000) at 2, online: Health Canada <http://www.hc-sc.gc.ca/fnihb/cp/adi/publications/the_evidence.pdf>.

11 CPHI, *supra* note 8 at 84.

12 Canada, "Canada's International Human Rights Policy" (Ottawa: Department of Foreign Affairs and International Trade, 2004) [DFAIT], online: Department of Foreign Affairs and International Trade <http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/hr1-rights-en.asp#1>. Canada has ratified the following treaties: *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Res. 39/46 Annex, 39 UN GAOR Supp. No. 51 at 197, UN Doc. A/3951 (1984), 1465 U.N.T.S. 85 (entered into force June 26, 1987) [*CAT*]; *International Convention for the Elimination of All Forms of Discrimination Against Women*, GA Res. 34/180, 34 UN GAOR Supp. No. 46 at 193, UN Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force 3 September 1981 [*CEDAW*]; *International Convention on the Elimination of All Forms of Racial Discrimination*, GA Res. 2106 (XX), Annex, 20 UN GAOR Supp. No. 14 at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195 (entered into force 4 January 1969) [*CERD*]; *Convention on the Rights of the Child*, UN Doc. A/RES/44/25 (entered into force 2 September 1990); *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9–14, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*]; *International Covenant on Economic, Social and Cultural Rights*, GA Res. 2200A (XXI), 21 UN GAOR Supp. No. 16 at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 January 1976) [*ICESCR*].

13 *ICCPR*, *ibid* at art. 6.

14 Human Rights Committee, General Comment 6, Art. 6 (16th Sess, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, (1994) UN Doc. HRI/GEN/1/Rev. 1 at 1 [Human Rights Treaty Bodies].

15 Human Rights Treaty Bodies, *ibid.*

16 Human Rights Treaty Bodies, *ibid.* at 5.

17 Canada became a member State of the United Nations on November 9 1945. See, United Nations "List of Member States" (Geneva: United Nations, 2003), online: United Nations <http://www.un.org/Overview/unmember.html>. The UN Charter requires all United Nations members to promote universal respect for human rights. See also generally, DFAIT, *supra* note 12.

18 *UN Charter*, *supra* note 1 at art. 55.

19 WHO, *supra* note 4 at Preamble.

20 *ICESCR*, *supra* note 12 at art. 12.

21 Committee on Economic, Social and Cultural Rights, General Comment 14 (2000), *The right to the highest attainable standard of health*, 22nd Session, 2000, UN Doc. E/C.12/2000/4 (2000) at paras. 30–45 [CESCR General Comment 14 (2000)].

22 Virginia A. Leary, "The Right to Health in International Human Rights Law" (1994) 1:1 Health and Human Rights: An International Journal (Boston: FXB Center, 2003), at "I. Terminology:

The Right to Health" [Leary], online: François-Xavier Bagnoud Center, Harvard School of Public Health <http://www.hsph.harvard.edu/fxbcenter/V1N1leary.htm>. See also, Hernan L. Fuenzalida-Puelma and Susan Scholle Connor, eds., *The Right to Health in the Americas* (Washington: PAHO) Scientific Publication No. 509, 1989 at 596-600 which states:

> The Pan American Health Organization (PAHO), while using the phrase 'right to health' suggests that the term "may be incomplete and conceptually misleading." PAHO suggests it would be more correct to view this right as a "right to health protection" which itself is comprised of two rights – the right to health care and the right to healthy conditions.

23 *Declaration of Alma-Ata*, adopted at the International Conference on Primary Health Care, Alma-Ata, U.S.S.R., 6–12 September 1978 at art. 4.

24 Leary, *supra* note 22 at "Participation".

25 *Universal Declaration of Human Rights*, GA/RES/217 A (III), UN Doc. A/810 at 71 (1948) at Preamble [*UDHR*].

26 *ICESCR*, *supra* note 12 at art. 12.

27 Organization of American States, General Assembly, 18th Sess., OAS/Ser.L/V/I.4 Rev. 9 (1988) at art. 10.

28 Organization of American States, General Assembly, 9th Sess., OAS/Ser.L/V/I.4 Rev. 9 (1948) at art. XI.

29 World Health Organization, "25 Questions & Answers on Health & Human Rights," *Health and Human Rights Publication Series*, No. 1, dated July 2002, at 13 [WHO 25].

30 *CERD*, *supra* note 12 at art. 5(e)(iv).

31 *CEDAW*, *supra* note 12 at art. 11(1)(f).

32 *CEDAW*, *ibid.* at art. 12(2).

33 *Vienna Declaration and Programme of Action*, World Conference on Human Rights, Vienna, 14–25 June 1993, UN Doc. A/CONF.157/23, at art. 5 [*Vienna Declaration*].

34 Leary, *supra* note 22 at "Interdependence of Human Rights."

35 Jonathan M. Mann et al., eds., *Health and Human Rights: A Reader* (New York: Routledge, 1999) at 5 [Mann].

36 Lynn P. Freedman. "Censorship and Manipulation of Family Planning Information: An Issue of Human Rights and Women's Health" in Mann, *ibid.* at 151.

37 Mann, *supra* note 35 at 73.

38 CESCR General Comment 14 (2000), *supra* note 21 at para. 1. See also, *The Iowa City Appeal in Advancing the Human Right to Health*, adopted 22 April 2001 by the Global Assembly on Advancing the Human Right to Health, convened at the University of Iowa, Iowa City, Iowa, 20–22 April 2001, at p. 3, online: University of Iowa College of Public Health: <http://www.public-health.uiowa.edu/news/pubs/special/healthright>. Prior to all other treaties and conventions, the UDHR advanced the international recognition of the interdependence and indivisibility of human rights. See also, González-Circle of Rights, *supra* note 5, which states that Article 25 of the declaration, emphasizes recognition of the right of all persons to an adequate standard of living, including guarantees for health and well-being. It acknowledges the relationship between health and well-being and its links with other rights, such as the right to food and the right to housing, as well as medical and social services. It adopts a broad view of the right to health as a human right, even though health is but one component of an adequate standard of living.

39 Office of the United Nations High Commissioner for Human Rights, "Leaflet No. 3: UN Charter-based Bodies and Indigenous Peoples" at 2 [Leaflet No. 3], online: Office of the United Nations High Commissioner for Human Rights <http://www.unhchr.ch/html/racism/indileaflet3.doc>.

40 Leaflet No. 3, *ibid.* at 3.

41 Office of the United Nations High Commissioner for Human Rights, *Indigenous Peoples: Working Group on Indigenous Peoples* [HRWGIP], online: Office of the United Nations High Commissioner for Human Rights <http://www.unhchr.ch/indigenous/mandate.htm>.

42 HRWGIP, *ibid.* See also, Update No. 15, Indigenous Peoples' Center for Documentation, Research and Information August/October 1996, [IPCDRI 1], online: Indigenous Peoples' Center for Documentation, Research and Information <http://www.docip.org/anglais/update_en/up_en_15.html>.

43 *Report of the Working Group on Indigenous Populations on its fourteenth session*, UN Doc. E/CN.4/Sub.2/1996/21 (16 August 1996) at paras. 85, 98 [*WGIP 1996*].

44 *Report of the Working Group on Indigenous Populations on its eighteenth session*, UN Doc. E/CN.4/Sub.2/2000/24 (17 August 2000) at para.2.

45 *Report of the Working Group on Indigenous Populations on its twentieth session*, UN Doc. E/CN.4/Sub.2/2002/24 (8 August 2002) at art. 14 [*WGIP 2002*].

46 *Report of the Working Group on Indigenous Populations on its eleventh session*, UN Doc. E/CN.4/Sub.2.1993/29 (23 August 1993) at art. 22 [*WGIP 1993*].

47 *WGIP 1993*, *ibid.* at art. 23.

48 *WGIP 1993*, *ibid.* at art. 24.

49 *WGIP 1993*, *ibid.* at art. 28.

50 *WGIP 1993*, *ibid.* at art. 31.

51 Articles 5 and 43 have been adopted as follows:

Article 5 "Every Indigenous person has the right to belong to a nationality"

Article 43 "All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals" (Office of the United Nations High Commissioner for Human Rights, " Leaflet No. 5: The Draft United Nations Declaration on the Rights of Indigenous Peoples" at 2-3 [Leaflet No. 5], online: Office of the United Nations High Commissioner for Human <http://www.unhchr.ch/html/racism/indileaflet5.doc>).

52 Update No. 56, Indigenous Peoples' Center for Documentation, Research and Information, January/February 2004 [IPCDRI 2], online: Indigenous Peoples' Center for Documentation, Research and Information <http://www.docip.org/download/english/upd56e.rtf>. This report demonstrates the contentious nature of negotiations on the Draft Declaration on the Rights of Indigenous Peoples.

53 *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, UN Doc. E/CN.4/2004/81 (7 January 2004).

54 Founded in 1919 the ILO became a specialized agency of the United Nations. Originally, the ILO was concerned with addressing the exploitation of Indigenous people as a labour pool for colonial industries and sought to entrench a standard of just and decent treatment of Indigenous people. See the *Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, adopted 26 June 1957, 328 U.N.T.S. 247 (entered into force 2 June 1959); online: <http://www.ilo.org/ilolex/english/convdispl.htm>. Canada has not ratified this convention.

55 *Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169)*, 72 I.L.O. Official Bull. 59 (entered into force 5 September 1991) [*ILO No. 169*].

56 WHO 25, *supra* note 29 at 21.

57 Luis Jesús Bello, "Circle of Rights, Economic Social & Cultural Rights Activism: A Training Resource, Module 6: ESC Rights of Indigenous Peoples" [Circle of Rights], online: University of Minnesota Human Rights Resource Center <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module6.htm>. See also, M. Battiste & J.Y. Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon: Purich, 2000) at 212–213:

These cultural rights arise within a system of beliefs, social practices and ceremonies of Aboriginal people. They are traced back to their ancestral Indigenous order and their relationship with the ecology.

58 International Labour Organization, Ilolex Database of International Labour Standards, "Convention No. *C169* was ratified by 17 countries", (2004), online: ILO <http://www.ilo.org/ilolex/english/newratframeE.htm>.

59 *Declaration of Indigenous Peoples Summit of the Americas*, adopted 31 March 2001, at art. 24, [*Summit*], online: Indigenous Peoples Summit of the Americas <http://www.dialoguebetweennations.com/dbnetwork/english/declation.pdf>.

60 *Summit*, *ibid.* at art. 25. Canada became a Permanent Observer at the OAS in 1972, and then joined as the 33rd Member State on 8 January 1990, see online: DFAIT<http://www.dfait-maeci.gc.ca/latinamerica/oas-history-en.asp 2004>.

61 Office of the United Nations High Commissioner for Human Rights, "Leaflet No. 7: The International Decade of the World's Indigenous People" [Leaflet No. 7], online: Office of the United Nations High Commissioner for Human Rights <http://www.unhchr.ch/html/racism/indileaflet7.doc>.

62 Leaflet No. 7, *ibid.*

63 Leaflet No. 7, *ibid.*

64 *Programme of activities of the International Decade of the World's Indigenous People*, (1999) UN GAOR, 54th Sess., Addendum, Agenda Item 113, UN Doc. A/54/487/Add.1 at para. 4 [*Programme of Activities 1999*].

65 *Programme of Activities 1999*, *ibid.*

66 *Programme of Activities 1999*, *ibid.* at para. 18.

67 *Programme of Activities 1999*, *ibid.* para. 24.

68 *Programme of Activities 1999*, *ibid.* at para. 4.

69 UNFPA was established in 1969 as the United Nations Fund for Population Activities.

70 *Programme of Activities 1999*, *supra* note 64 at para. 8.

71 *Programme of Activities 1999*, *ibid.* at paras. 9-10. See also, *Draft Report on Indigenous Peoples and UNDP: Strengthening our Partnership*, Geneva, July 1999, online: UNDP <http://www.undp.org/csopp/CSO/NewFiles/ipdocun.html>.

72 *Programme of Activities 1999*, *supra* note 64. at para. 10.

73 *Programme of Activities 1999*, *ibid*. at para. 37. See also, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57*. UN Doc. E/CN.4/2002/97 (4 February 2002) at para 24.

74 *WGIP 2002*, *supra* note 45 at para. 58.

75 *WGIP 2002*, *ibid* at paras. 57–59.

76 *Report of the Working Group on Indigenous Populations on its nineteenth session*, UN Doc. E/CN.4/Sub.2/2001/17 (9 August 2001) at paras. 9, 99.

77 *Geneva Declaration on the Health and Survival of Indigenous Peoples* (26 November 1999), World Health Organization Consultation on Indigenous Health, Geneva, 23–26 November 1999, at Preamble [*Geneva Declaration*], online: Healthsite <http://www.healthsite.co.nz/hauora_maori/resources/feature/0001/002.htm>.

78 *Geneva Declaration*, *ibid.* at part IV.

79 On July 28, 2000, the United Nations Economic and Social Council decided to establish, by consensus resolution, a "Permanent Forum on Indigenous Issues" as a subsidiary organ of the Council. ECOSOC Res. 2000/22 at 50-52), online: < http://www.un.org/documents/ecosoc/dec/2000/edec2000-inf2-add2.pdf>. See John Carey & Siegfried Wiessner, "A New United Nations Subsidiary Organ: The Permanent Forum on Indigenous Issues" (April 2001), online: American Association of International Law <http://www.asil.org/insights/insigh67.htm>.

80 Office of the United Nations High Commissioner for Human Rights, "Leaflet No. 6: The Permanent Forum on Indigenous Issues" [Leaflet No. 6], online: Office of the United Nations High Commissioner for Human Rights at 1 <http://www.unhchr.ch/html/racism/indileaflet6.doc>.

81 United Nations, "Health Needs of Indigenous People Stressed at Permanent Forum" United Nations Press Release, 20 May 2002, UN Doc. HR/4597.

82 United Nations, "Appointment of Special Rapporteur for Indigenous People 'A Watershed', Says Human Rights Commissioner Robinson," United Nations Information Service, dated 10 August 2001, online: United Nations Information Service <http://www.unis.unvienna.org/unis/pressrels/2001/hr4555.html>.

83 United Nations High Commissioner for Human Rights, *Human rights and indigenous issues, Commission on Human Rights resolution 2001/57*, UN Doc. E/CN.4/RES/2001/57.

84 *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission Resolution 2001/57*, UN ESCOR, 59th Sess., UN Doc.E/CN.4/2003/90/Add.2 (24 February 2003) [Stavenhagen].

85 This report is due out in April 2005. See, United Nations, "Special Rapporteur on Human Rights of Indigenous People Ends Visit to Canada" United Nations Press Release, 4 June 2004, online: United Nations <http://www.unog.ch/news2/documents/newsen/hr04048e.htm>.

86 United Nations, "Commission Adopts Resolutions on Myanmar, Death Penalty, Other Issues on Promotion of Human Rights: Mandates of Three Special Rapporteurs Extended" United Nations Press Release, 21 April 2004, HR/CN/1095, online: United Nations <http://www.un.org/News/Press/docs/2004/hrcn1095.doc.htm>.

87 Centre for Economic and Social Rights, "Rights Violations in Ecuadorian Amazon: The Human Consequences of Oil Development" in Mann, *supra* note 35 at 130 [Centre for Economic and Social Rights].

88 Erica-Irene A. Daes, Special Rapporteur, *Final Working Paper, "Human Rights of Indigenous Peoples and Their Relationship to Land"*, UN Doc. E/CN.4/Sub.2/2001/21 (11 June 2001) at para. 13 [Daes].

89 James Sákéj Henderson, "Mikmaq tenure in Atlantic Canada" (1995) 18:2 Dal. L.J. 196 at 217–219.

90 Stavenhagen, *supra* note 84 at para. 25.

91 *WGIP 2002*, *supra* note 45 at para. 10.

92 *WGIP 2002*, *ibid.* at para. 16.

93 *Report of the World Summit on Sustainable Development*, Johannesburg, South Africa, 26 August – 4 September 2002, UN Doc. A/CONF.199/20 at para. 5 [Johannesburg].

94 Johannesburg, *ibid.* at para. 25.

95 Richard Tardif, "Historical Use of Legal Term 'Indigenous Peoples' in UN Declaration" *The Concordian* (8 July 2003) at 1.

An example of the negative impact of today's current political currents towards Indigenous peoples is Article 24 of the *Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Durban, South Africa, 31 August – 8 September 2001, UN Doc. A/Conf.189/12 [Durban Declaration], online: http://www.hri.ca/racism/official/finalreport.shtml. Article 24 qualified the use of the term "Indigenous peoples" used in the Durban Declaration "without prejudice to the outcome of, ongoing international negotiations on texts that specifically deal with this issue, and cannot be construed as having any implications as to rights under international law." This has been widely criticized, as expressed by the International Movement Against All Forms of Discrimination and Racism, which states, "Any qualification of the right of Indigenous Peoples to self-determination is racist and is contrary to the fundamental principles of international law. The [then] proposed caveat paragraph…of the official WCAR State Declaration is a manifestation of racism against Indigenous Peoples and should be deleted in its

entirety" (see "Indigenous Peoples and WCAR: Declaration of the NGO Forum" (3 September 2001) at para. 365, online: IMADR: <http://www.imadr.org/durban.news.indigenous.html>.

96 Durban Declaration, *ibid.* at "Programme of Action", para. 111.

97 James LaMouche, "Natural Health Products Directorate (NHPD) Aboriginal Roundtable" National Aboriginal Health Organization [NAHO] Briefing Note 042/02, unpublished, on file at NAHO at 1.

98 Secretariat of the Convention on Biological Diversity, *Convention on Biological Diversity*: *Text and Annexes* (Montreal: Secretariat of the Convention on Biological Diversity, United Nations, 2003) at art. 8(j) [CBD].

99 CBD, *ibid*. at "Parties to the Convention on Biological Diversity" online: Secretariat of the Convention on Biological Diversity <http://www.biodiv.org/world/parties.asp>.

100 CBD, *ibid.*

101 RCAP, *supra* note 6 at p. 185.

102 In 1999 First Nations people had a higher rate of pertussis (3 times), hepatitis A (5.3 times), shigellosis (20 times), giardiasis (1.6 times) and tuberculosis (8-10 times) than the general Canadian population. See *Statistical*, *supra* note 7.

103 National Aboriginal Health Organization [NAHO], Briefing Note 059/03: "Canada's Environment Agenda and Implications for Aboriginal Peoples" (Ottawa: NAHO, 2003) at 1.

104 CBD, *supra* note 98.

105 Centre for Economic and Social Rights, *supra* note 87 at 135.

106 CESCR General Comment 14 (2000), *supra* note 21 at para. 43.

107 See for instance, *Re Ownership of Offshore Mineral Rights of British Columbia*, [1967] S.C.R. 792; *Canada (Attorney General) v. Ontario (Attorney General) (Labour Convention case)*, [1937] A.C. 326 at 348 (P.C.); *Bitter v. Secretary of State* (1944), 3 D.L.R. 482 at 497.

108 *Promises to Keep: Implementing Canada's Human Rights Obligations*, Report of the Standing Committee on Human Rights, (December 2001), [*Promises*] online: Parliament of Canada <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm>.

109 Promises, *ibid.* at "Introduction: Human Rights in Canada and Beyond".

110 See, *Canada (Attorney General) v. Ontario (Attorney General) (Labour Convention case)*, [1937] A.C. 326 (P.C.) (per Lord Atkin). Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action (*A.-G. Can. v. A.-G. Ont. et al.; Reference Re: Weekly Rest in Industrial Undertakings Act, Minimum Wages Act and Limitations of Hours of Work Act*, [1937] 1 D.L.R. 673). The contents of economic, social and cultural rights are being litigated in many countries around the world, including Canada. See, for instance *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429.

111 *Promises*, *supra* note 108 at "Introduction: Human Rights in Canada and Beyond".

112 *Promises*, *ibid.* at "Chair's Forward".

113 *ICESCR*, *supra* note 12 at art. 12. Canada ratified this Covenant on 19 August 1976.

114 *Ibid.* See also, *ILO Convention No. 169*, *supra* note 55 at art. 25.

115 RCAP, *supra* note 6 at p. 2.

116 *WGIP 1996*, *supra* note 43 at para. 98.

117 *WGIP 1996*, *ibid.* at para. 93.

118 See, for example, RCAP, *supra* note 6 at pp. 152–165.

119 *CESCR* General Comment 14 (2000), *supra* note 21 at art. 27.

120 H. Kindred et al., *International Law, Chiefly as Interpreted and Applied in Canada*, 4th ed. (Emond Montgomery Publication, 1987) at 635-82. The *UN Charter* and Covenants are multilateral treaties, thus they must be interpreted according to the *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980). In 1970, the federal

government of Canada unconditionally acceded to the *Vienna Convention on the Law of Treaties*, and the convention came into force in Canada on 27 January 1980. See generally, A. McChesney, *Promoting and Defending Economic, Social, and Cultural Rights A Handbook* (Annapolis Junction, MD: Association for the Advancement of Science, 2000); R.L. Barsh, "Indigenous Peoples in the 1990s: From Object to Subject of International Law?" (1994) 7 Harv. Hum. Rts. J. 1; R. Falk, "The Rights of Peoples (In Particular Indigenous Peoples)" in J. Crawford, ed., *The Rights of Peoples* (Oxford: Clarendon, 1988) 17.

121 *Constitution Act, 1982*, *supra* note 3.

122 Boyer, *supra* note 3 at 8.

123 *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 148.

124 *National Corn Growers Association v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324 at para. 74.

125 Patrick Macklem, "The Human Rights of Indigenous Peoples: International Developments, Domestic Implications" (Canadian Aboriginal Law Conference, Vancouver, Pacific Business and Law Institute, December 2002) at 12 [Macklem].

126 See, CESCR General Comment 14 (2000), *supra* note 21 at paras. 30–45.

127 James B. Waldram, et al., *Aboriginal Health in Canada: Historical, Cultural and Epidemiological Perspectives* (Toronto: University of Toronto Press, 1995) at 262.

128 WHO, *supra* note 4.

Bibliography

1. International Materials

1.1 Treaties and Other International Agreements

Constitution of the World Health Organization, opened for signature July 22, 1946, 14 U.N.T.S. 185 (entered into force 7 April 1948).

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46 Annex, 39 UN GAOR Supp. No. 51 at 197, UN Doc. A/3951 (1984), 1465 U.N.T.S. 85 (entered into force June 26, 1987).

Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, adopted 26 June 1957, 328 U.N.T.S. 247 (entered into force 2 June 1959).

Convention on the Rights of the Child, UN Doc. A/RES/44/25 (entered into force 2 September 1990).

International Convention for the Elimination of All Forms of Discrimination Against Women, GA Res. 34/180, 34 UN GAOR Supp. No. 46 at 193, UN Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force 3 September 1981).

International Convention on the Elimination of All Forms of Racial Discrimination, GA Res. 2106 (XX), Annex, 20 UN GAOR Supp. No. 14 at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195 (entered into force 4 January 1969).

International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, arts. 9–14, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976).

International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), 21 UN GAOR Supp. No. 16 at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 January 1976).

Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980).

1.2 United Nations Materials

Charter of United Nations, 26 June 1945, Can. T.S. No. 7 (entered into force 24 October 1945).

Cobo, J.R. Martinez. *Study of the Problem of Discrimination Against Indigenous Populations* (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), UN Doc. E/CN.4/Sub.2/1986/7/Add. 4.

Committee on Economic, Social and Cultural Rights, General Comment 14 (2000), *The right to the highest attainable standard of health*, 22nd Session, 2000, UN Doc. E/C.12/2000/4 (2000).

Daes, Erica-Irene A., Special Rapporteur. *Final Working Paper, "Human Rights of Indigenous Peoples and Their Relationship to Land"*, UN Doc. E/CN.4/Sub.2/2001/21 (11 June 2001).

Draft Report on Indigenous Peoples and UNDP: Strengthening our Partnership, Geneva, July 1999, online: UNDP <http://www.undp.org/csopp/CSO/NewFiles/ipdocun.html>.

Human Rights Committee, General Comment 6, Art. 6 (16th Sess, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, (1994) UN Doc. HRI/GEN/1/Rev. 1.

Office of the United Nations High Commissioner for Human Rights, *Indigenous Peoples: Working Group on Indigenous Peoples*, online: Office of the United Nations High Commissioner for Human Rights <http://www.unhchr.ch/indigenous/mandate.htm>.

Office of the United Nations High Commissioner for Human Rights, "Leaflet No. 3: UN Charter-based Bodies and Indigenous Peoples".

Office of the United Nations High Commissioner for Human Rights, " Leaflet No. 5: The Draft United Nations Declaration on the Rights of Indigenous Peoples".

Office of the United Nations High Commissioner for Human Rights, "Leaflet No. 6: The Permanent Forum on Indigenous Issues" online: The Office of the United Nations High Commissioner for Human Rights at 1 <http://www.unhchr.ch/html/racism/indileaflet6.doc>.

Office of the United Nations High Commissioner for Human Rights, "Leaflet No. 7: The International Decade of the World's Indigenous People".

Programme of activities of the International Decade of the World's Indigenous People, (1999) UN GAOR, 54th Sess., Addendum, Agenda Item 113, UN Doc. A/54/487/Add.1.

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32, UN Doc. E/CN.4/2004/81 (7 January 2004).

Report of the Working Group on Indigenous Populations on its eighteenth session, UN Doc. E/CN.4/Sub.2/2000/24 (17 August 2000).

Report of the Working Group on Indigenous Populations on its eleventh session (1993) UN Doc. E/CN.4/Sub.2.1993/29 (23 August 1993).

Report of the Working Group on Indigenous Populations on its fourteenth session, UN Doc. E/CN.4/Sub.2/1996/21 (16 August 1996).

Report of the Working Group on Indigenous Populations on its nineteenth session, UN Doc. E/CN.4/Sub.2/2001/17 (9 August 2001).

Report of the Working Group on Indigenous Populations on its twentieth session, UN Doc. E/CN.4/Sub.2/2002/24 (8 August 2002).

Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 31 August – 8 September 2001, UN Doc. A/Conf.189/12.

Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August – 4 September 2002, UN Doc. A/CONF.199/20.

Stavenhagen, Rodolfo, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, submitted pursuant to Commission resolution 2001/57*. UN Doc. E/CN.4/2002/97 (4 February 2002).

United Nations High Commissioner for Human Rights, *Human rights and indigenous issues, Commission on Human Rights resolution 2001/57*, UN Doc. E/CN.4/RES/2001/57.

United Nations, "Appointment of Special Rapporteur for Indigenous People 'A Watershed', Says Human Rights Commissioner Robinson," United Nations Information Service, dated 10 August 2001, online: United Nations Information Service http://www.unis.unvienna.org/unis/pressrels/2001/hr4555.html.

United Nations, "Commission Adopts Resolutions on Myanmar, Death Penalty, Other Issues on Promotion of Human Rights: Mandates of Three Special Rapporteurs Extended" United Nations Press Release, 21 April 2004, HR/CN/1095, online: United Nations <http://www.un.org/News/Press/docs/2004/hrcn1095.doc.htm>.

United Nations, "Health Needs of Indigenous People Stressed at Permanent Forum" United Nations Press Release, 20 May 2002, UN Doc. HR/4597.

United Nations, "Special Rapporteur on Human Rights of Indigenous People Ends Visit to Canada" United Nations Press Release, 4 June 2004, online: United Nations http://www.unog.ch/news2/documents/newsen/hr04048e.htm.

Universal Declaration of Human Rights, GA/RES/217 A (III), UN Doc. A/810 at 71 (1948).

Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14–25 June 1993, UN Doc. A/CONF.157/23.

1.3 Organization of American States

OAS, General Assembly, 18th Sess., *Additional Protocol of the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)*, OAS/Ser.L/V/I.4 Rev. 9 (1988).

OAS, General Assembly, 9th Sess., *American Declaration of the Rights and Duties of Man*, OAS/Ser.L/V/I.4 Rev. 9 (1948).

1.4 International Conference/Summit Documents

Declaration of Alma-Ata, adopted at the International Conference on Primary Health Care, Alma-Ata, U.S.S.R., 6–12 September 1978.

Declaration of Indigenous Peoples Summit of the Americas, adopted 31 March 2001, online: Indigenous Peoples Summit of the Americas http://www.dialoguebetweennations.com/dbnetwork/english/declation.pdf.

Geneva Declaration on the Health and Survival of Indigenous Peoples (26 November 1999), World Health Organization Consultation on Indigenous Health, Geneva, 23–26 November 1999, online: Healthsite <http://www.healthsite.co.nz/hauora_maori/resources/feature/0001/002.htm>.

Iowa City Appeal in Advancing the Human Right to Health, adopted 22 April 2001 by the Global Assembly on Advancing the Human Right to Health, convened at the University of Iowa, Iowa City, Iowa, 20–22 April 2001, online: University of Iowa College of Public Health: <http://www.public-health.uiowa.edu/news/pubs/special/healthright>.

Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 31 August – 8 September 2001, UN Doc. A/Conf.189/12, online: http://www.hri.ca/racism/official/finalreport.shtml.

Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14–25 June 1993, UN Doc. A/CONF.157/23, at art. 5.

2. Texts, Articles, and Reports

Anaya, James. *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996).

Barsh, R.L. "Indigenous Peoples in the 1990s: From Object to Subject of International Law?" (1994) 7 Harv. Hum. Rts. J. 1.

Battiste, M. & Henderson, J.Y. *Protecting Indigenous Knowledge and Heritage: A Global Challenge*. Saskatoon: Purich, 2000.

Bello, Luis Jesús. "Circle of Rights, Economic Social & Cultural Rights Activism: A Training Resource, Module 6: ESC Rights of Indigenous Peoples", online: University of Minnesota Human Rights Resource Center <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module6.htm>.

Boyer, Yvonne. "Aboriginal Health: A Constitutional Rights Analysis". Discussion Paper Series in Aboriginal Health, No. 1. National Aboriginal Health Organization and Native Law Centre of Canada, 2003.

Canada, Department of Foreign Affairs and International Trade. "Canada's International Human Rights Policy". Ottawa: Department of Foreign Affairs and International Trade, 2004.

Canada, Health Canada. "Diabetes Among Aboriginal People in Canada: The Evidence". Ottawa: 2000, online: Health Canada <http://www.hc-sc.gc.ca/fnihb/cp/adi/publications/the_evidence.pdf.

Canada, Health Canada, Report of the First Nations and Inuit Health Branch (FNIHB). *A Statistical Profile of the Health of First Nations in Canada*. Ottawa: Supply and Services, 2003.

Canada, Report of the Standing Committee on Human Rights. *Promises to Keep: Implementing Canada's Human Rights Obligations*. December 2001, online: Parliament of Canada <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep02dec01-e.htm>.

Canada, Royal Commission on Aboriginal People. *Report of the Royal Commission on Aboriginal Peoples*, Vol. 3, *Gathering Strength*. Ottawa: Supply and Services Canada, 1996.

Canadian Population Health Initiative. *Improving the Health of Canadians*. Ottawa: Canadian Institute for Health Information, 2004.

Carey, John & Wiessner, Siegfried. "A New United Nations Subsidiary Organ: The Permanent Forum on Indigenous Issues" (April 2001), online: American Association of International Law <http://www.asil.org/insights/insigh67.htm>.

Centre for Economic and Social Rights. "Rights Violations in Ecuadorian Amazon: The Human Consequences of Oil Development" in Jonathan M. Mann et al., eds., *Health and Human Rights: A Reader*. New York: Routledge, 1999.

Falk, R. "The Rights of Peoples (In Particular Indigenous Peoples)" in J. Crawford, ed., *The Rights of Peoples*. Oxford: Clarendon, 1988.

First Nations and Inuit Regional Health Survey National Steering Committee. *First Nations and Inuit Regional Health Survey, National Report, 1999*. First Nations, Regional Longitudinal Survey Steering Committee, 1999.

Freedman, Lynn P. "Censorship and Manipulation of Family Planning Information: An Issue of Human Rights and Women's Health" in Jonathan M. Mann et al., eds., *Health and Human Rights: A Reader*. New York: Routledge, 1999.

Fuenzalida-Puelma, Hernan L. and Scholle Connor, Susan, eds. *The Right to Health in the Americas*. Washington: PAHO Scientific Publication No. 509, 1989.

González, Enrique. "Circle of Rights, Economic Social & Cultural Rights Activism: A Training Resource, Module 14 The Right to Health," online: University of Minnesota Human Rights Resource Center. <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module14.htm>.

Henderson, James Sakej. "Mikmaq tenure in Atlantic Canada" (1995) 18:2 Dal. L.J. at 196.

Indigenous Peoples' Center for Documentation, Research and Information. Update No. 15, August/October 1996, online: Indigenous Peoples' Center for Documentation, Research and Information <http://www.docip.org/anglais/update_en/up_en_15.html>.

Indigenous Peoples' Center for Documentation, Research and Information. Update No. 56, January/February 2004, online: Indigenous Peoples' Center for Documentation, Research and Information <http://www.docip.org/download/english/upd56e.rtf>.

International Labour Organization, Ilolex Database of International Labour Standards. "Convention No. *C169* was ratified by 17 countries", (2004), online: ILO <http://www.ilo.org/ilolex/english/newratframeE.htm>.

Kindred, H., et al. *International Law, Chiefly as Interpreted and Applied in Canada*, 4th ed. Emond Montgomery Publication, 1987.

LaMouche, James. "Natural Health Products Directorate (NHPD) Aboriginal Roundtable". National Aboriginal Health Organization [NAHO] Briefing Note 042/02, unpublished, on file at NAHO.

Leary, Virginia A. "The Right to Health in International Human Rights Law" (1994) 1:1 Health and Human Rights: An International Journal. Boston: FXB Center, 2003.

Macklem, Patrick. "The Human Rights of Indigenous Peoples: International Developments, Domestic Implications". Canadian Aboriginal Law Conference, Vancouver, Pacific Business and Law Institute, December 2002.

MacMillan, H.L. "Aboriginal Health" (1996) 155 (11) Canadian Medical Association Journal 1569.

Mann, Jonathan M., et al. eds. *Health and Human Rights: A Reader*. New York: Routledge, 1999.

McChesney, A., *Promoting and Defending Economic, Social, and Cultural Rights A Handbook*. Annapolis Junction, MD: Association for the Advancement of Science, 2000.

National Aboriginal Health Organization [NAHO]. Briefing Note 059/03: "Canada's Environment Agenda and Implications for Aboriginal Peoples". Ottawa: NAHO, 2003.

Secretariat of the Convention on Biological Diversity, *Convention on Biological Diversity*: *Text and Annexes*. Montreal: Secretariat of the Convention on Biological Diversity, United Nations, 2003.

Smylie, J.A. “Guide for Health Professionals Working with Aboriginal Peoples: Health Issues Affecting Aboriginal Peoples” (2000) 23 Journal of the Society of Obstetricians and Gynecologists of Canada 54.

Tardif, Richard. “Historical Use of Legal Term ‘Indigenous Peoples’ in UN Declaration.” *The Concordian*, 8 July 2003.

Waldram, James B., et al. *Aboriginal Health in Canada: Historical, Cultural and Epidemiological Perspectives*. Toronto: University of Toronto Press, 1995.

World Health Organization, “25 Questions & Answers on Health & Human Rights, ” *Health and Human Rights Publication Series*, No. 1, dated July 2002.

3. Legislation

Constitution Act, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

4. Case Law

A.-G. Can. v. A.-G. Ont. et al.; Reference Re: Weekly Rest in Industrial Undertakings Act, Minimum Wages Act and Limitations of Hours of Work Act, [1937] 1 D.L.R. 673.

Bitter v. Secretary of State (1944), 3 D.L.R. 482.

Canada (Attorney General) v. Ontario (Attorney General) (Labour Convention case), [1937] A.C. 326 (P.C.).

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429.

National Corn Growers Association v. Canada (Import Tribunal), [1990] 2 S.C.R. 1324.

Re Ownership of Offshore Mineral Rights of British Columbia, [1967] S.C.R. 792.

Reference Re Secession of Quebec, [1998] 2 S.C.R. 217.