
UNDRIP articles 25 and 26 explain Indigenous conceptions of territories.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

- 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.**
- 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.**
- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.**

Source: United Nations. 2007. *United Nation Declaration on the Rights of Indigenous Peoples*. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

TK Decision Making and Governance: Caretaking and Stewardship

As noted above, First Nations peoples had their own diplomatic, political, legal and governance systems for thousands of years. This means that First Nations peoples had their own laws, processes, protocols, codes of conducts, and ethical and moral codes relating to the generation, innovation, sharing and protection of their own knowledge. It is important to maintain the governance and guardianship over your own knowledge.

Indigenous knowledge supported Indigenous environmental decision making for thousands of years and continues to do so. It is important to exercise your governance authority over your own knowledge

Indigenous Peoples are increasingly asserting sovereignty and governance over their own TK systems. In Canada, a consideration of TK in various environmental regimes is more than two decades old, and includes legislation such as the *Canadian Environmental Protection Act, Impact Assessment Act* (formally *Canadian Environmental Assessment Act*), *Species at Risk Act* and, more recently, the *Fisheries Act*. However, concerns remain regarding how knowledge is shared and for what purposes. Usually, it was proponents rather

than the affected First Nations that conducted TK studies. In effect, the TK studies consisted of “extracting” knowledge from communities and TK holders. To counter this long-standing practice, Indigenous communities are developing their own TK protocols, guidance documents and processes to maintain governance over their own knowledge. This TK Module will provide resources for you to develop your own TK protocol, thus ensuring you remain the decision maker over your own knowledge.

The Rights and Value of TK

The recognition of TK is closely tied to the recognition of Aboriginal and treaty rights and the ability to exercise such rights. As noted above, UNDRIP, to an extent, offers a framework for how external interests can support TK, through laying out what is required to support Indigenous self-determination from political, economic, social, health, legal, cultural and spiritual perspectives.

This means that Canada and its various governments and agencies have an obligation to support Indigenous Peoples in developing their “measures” to protect TK. TK is part of the recognition of Indigenous rights, treaties and self-determination.

Example Protocol

Mi’kmaw Ethics Watch: The Research Principles and Protocols provides a prescribed approval process to the collection, analysis and reporting of research data generated from Mi’kmaq First Nation communities throughout the province of Nova Scotia.

Roles and Responsibilities:

- a. **“Any research, study or inquiry into collective Mi’kmaw knowledge, culture, arts or spirituality which involves partnerships in research shall be reviewed by the Mi’kmaw Ethics Watch” (p. 17).**
- b. **“The Mi’kmaq Ethics Watch (Committee, etc.) shall conduct a fair and timely review of all research conducted among Mi’kmaq people and shall maintain control over all research processes” (p. 17).**
- c. **“List of Mi’kmaw Ethics Watch Obligations found on page 20.”**

Source: Mi’kmaw Ethics Watch. Undated. <https://www.cbu.ca/wp-content/uploads/2019/08/MEW-Principles-and-Protocols.pdf>

An important aspect of rights and TK includes intellectual property. Unfortunately, First Nations cannot fully protect TK under current intellectual property regimes in Canada. Therefore, it is important to be explicit about how TK will be protected through the development of your own protocols and processes.

CASE STUDY

LHOOSK'UZ DENÉ NATION AND ULKATCHO FIRST NATION

The Lhoosk'uz Dené Nation and Ulkatcho First Nation jointly conducted a TK study, and it resulted in information that they used to protect both their land and religious rights.

The TK study was part of the consultation process for the Blackwater Gold Mine Project. Lhoosk'uz Dené Nation and Ulkatcho First Nation hired Keefer Ecological Services Ltd. to compile and write the information. The proponent made accommodations.

The proposed site for the mine was Mount Davidson, which was important due to its sacred sites, healing powers, and hunting and berry-picking grounds.

To design the study, meetings were held with the Indigenous Nations, federal and provincial governments, Elders, Band members and staff to develop a methodology. The methodology they designed was to gather information about the types of potential risks to the environment and human health. They did so by holding community meetings and information sessions, conducting community interviews, circulating newsletters to inform the community, and meeting with Chiefs and Councils multiple times.

From there, baseline information on the at-risk parts of the environment was collected from community interviews, Traditional Knowledge, traditional use studies, and pre-existing information from sources such as Statistics Canada, Indian and Northern Affairs Canada, and North-

ern Health Authority. Additional Traditional Knowledge from past land use studies was also used. This baseline information was collected over a period of three years. These risks were then rated based on the inherent risk level and the potential for mitigation measures.

In response to the potential impacts, the proponent proposed mitigation measures. These were “generally incorporated” into the provincial and federal conditions for project approval. For example, the development plan was adjusted to minimize the impact on Mount Davidson, treat polluted water, store fuel and refuel outside of riparian areas, etc.

Source: Lhoosk'uz Dené Nation and Ulkatcho First Nation Part C Blackwater Gold Mine Project (Blackwater). May 10, 2019. Peoples. <https://ceaa-acee.gc.ca/050/documents/p80017/130537E.pdf>

Why use TK in an EA?

Most First Nations are located in rich, biologically diverse areas where there is an abundance of forests, water, wildlife, etc. They have lived in balance with their surroundings or in a “sustainable” way for thousands of years. The people in these communities possess knowledge of how to continue to live in this “sustainable” manner. However, proponents, governments and others often view First Nation territories as natural resources to be exploited for economic gain. It has become an important challenge for all peoples to seek a balance that will allow for prosperity (as defined by the First Nation) and ensure a sustainable planet for future generations. The collective knowledge systems or TK of the community will assist in achieving well-being for the community.

First Nations have treaty and inherent rights to access their territories for hunting, gathering, fishing, medicine-gathering and spiritual activities. Often, when industries and governments enter the First Nations’ territories to take resources, the damage to the territory is immense and it will take hundreds of years for the earth to repair itself. Some change are irreversible. The people, land and waters are often harmed. Thus, First Nations must

be involved in the decisions that impact the lands, waters, wildlife, forests, etc., that they rely on.

Therefore, it is not a question of “why use TK” but rather a question of “how to use TK” in EAs to ensure that Indigenous Peoples maintain governance and control over decision making regarding their own knowledge. It also becomes important to protect TK from misuse or appropriation. First Nations peoples often feel an enormous responsibility to share TK so better decisions can be made regarding the environment. First Nations are highly motivated to protect the environment for future generations, and thus feel compelled to become involved in processes that might offer opportunities for better, more sustainable decision making by others.

It becomes very important for Indigenous Peoples to maintain decision-making authority over their own knowledge and to self-determine the terms and conditions by which TK will be shared by external interests.

Risk Assessment

Due to the heightened interest in TK, it is important to be cautious about who is seeking TK from your community and why. In the past, when Indigenous Peoples have

shared TK in EAs, their TK was not always considered or used, despite numerous studies being undertaken (usually by the proponent and external consultants). In some cases, First Nations have reported that their TK was used against them in legal proceedings. It is important to assess the risks of sharing your knowledge in EAs, as it is very difficult to ensure your knowledge will be protected (or even considered in decision making). You must assess the risk against the benefit of contributing your knowledge to an EA, and the degree of control you will have over your knowledge once it leaves your community.

Protecting TK in EAs

EAs are a public process and information submitted as part of the process is typically available to governments, the public and proponents. It is, therefore, important that First Nation communities have a process in place to protect their knowledge from misrepresentation and misuse. (See the References & Resources Module for samples of TK protocols.)

Considerations in Conducting a TK Study

If your First Nation wishes to include TK as part of an EA, there are several challenges to consider. These include: