
KAIROS supports these key policy issues:

The endorsement and implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Respecting and protecting Indigenous cultures, traditions and values through the enforcement of Indigenous land rights, and the recognition of Indigenous peoples' right to self-determination, including the right to free, prior and informed consent.

The timely establishment of a just process for comprehensive land rights negotiations, including revising the federal Comprehensive Land Claims Policy to remove the policy of extinguishment or "non-assertion" of rights. * (*see appendix for terms)

The establishment of an independent land claims process to resolve specific claims in a just and timely manner.

Elimination of the discrepancy in response of authorities to violence against Indigenous women, bringing those responsible to justice, and addressing the marginalization and poverty that exacerbate violence against Indigenous women.

Indigenous Rights: A KAIROS Strategy October 2010

In April 2009, KAIROS completed a restructuring process that resulted in two program themes: Sustainability and Dignity and Rights. Within this framework, members proposed an **increased priority** on KAIROS' contribution to Indigenous Rights* (*see appendix for terms). KAIROS member churches have asked us to increasingly ground our Indigenous rights work in issues and communities in Canada, while continuing to make global links.

A KAIROS Approach

KAIROS' Indigenous Rights work is rooted in biblical justice and framed by two important contexts—the commitment of KAIROS churches towards right relations with Indigenous peoples, particularly in Canada, and the lived reality of Indigenous people across the globe, an experience of marginalization that transcends borders. KAIROS strives to be informed by Indigenous peoples through all aspects of our work, prioritizing the voices of Indigenous peoples in our member churches, as well as relating to national and regional Indigenous organizations. KAIROS' work builds on the ecumenical Indigenous rights work of Project North, the Aboriginal Rights Coalition, and the Canadian Ecumenical Jubilee Initiative.

Foundations of Faith

KAIROS' ecumenical work on justice for Indigenous peoples is a commitment of faith. Indigenous peoples within and beyond our churches have offered a spiritual vision of 'all my relations', in which humans are brought into life to find their relationship with the Creator and all of creation.¹ KAIROS work on Indigenous rights flows from a commitment to repair and renew the relationship between Indigenous and non-Indigenous people, achieving the peace, balance, and mutual respect intended by the Great Spirit, the Creator.

Elders in many Aboriginal communities teach about the covenant that ancestors made with the Great Spirit. This teaching is also present in biblical stories of the covenant relationship between God and the people of Israel. "In turn, this covenant was renewed by Jesus Christ who proclaimed the equality of all human beings as sons and daughters of creation (e.g. Galatians 3:28)."ⁱⁱ Majority society in Canada, including in our churches, has fallen far short of the covenantal relationship which should have been the basis of living out treaties. Covenantal teachings urge us to renew the commitments to peace and friendship extended in the treaties, and to live out a new covenant in justice by pursuing Indigenous rights.

The Churches' Indigenous rights work has also been informed by the biblical notion of Jubilee which offers a vision of new beginning. In "A Call to Reflection on Aboriginal Land Rights" issued in September 2000, church

leaders from across the ecumenical spectrum said: "When we in Canada look through biblical lenses at what most urgently needs to be challenged and changed in our life together, our country's failures in respecting the rights of Aboriginal peoples confront us strongly. Jubilee justice here in this historic moment must include working to establish new, more respectful relationships with the land and its original inhabitants. Jubilee recognizes that human history with its burden of sin will establish injustices, but insists that through God's mercy it is not inevitable that unjust patterns, once in place, must bind people forever. There is always room for repentance and change." Ecumenical Indigenous rights work becomes one way that churches and communities can participate in that transformation.

Nation to Nation Framework: For KAIROS, right relationship with Indigenous people begins with recognizing Indigenous peoples as distinct peoples and nations, with rights to land and self-determination. In 1987, Canadian churches affirmed these foundational principles in a joint pastoral statement entitled *A New Covenant*. In 2007, reaffirming their statement, leaders of KAIROS' churches invited "all our Christian communities to continue working ecumenically and collaboratively with Aboriginal Peoples and Canadian society to build nation-to-nation relationships that protect and enforce Aboriginal treaty and inherent rights, including the right to self-determination."

Within the context of the nation-to-nation relationship, KAIROS must be open to world views expressed by Indigenous peoples—perspectives very pertinent to many aspects of our justice work. Learning and relationship-building at all levels of our churches and networks is critical, and protocols, such as recognizing traditional territory or offering an elder tobacco to receive a teaching, are symbolic, important steps in reflecting what has been learned.

Nation-to-nation relationships also mean being open to requests from Indigenous organizations, particularly national bodies. While these initiatives need to be assessed in light of our capacity to achieve results on our focused program, these moments are critical in maintaining credibility on Indigenous issues and forging relationships of continued trust.

Specific Issues and Cases:

KAIROS engages with specific communities with common concerns on key policy issues:

A. United Nations Declaration on the Rights of Indigenous Peoples: *Achieving the endorsement and implementation of the United Nations Declaration on the Rights of Indigenous Peoples.*

KAIROS aspires to strengthen a nation-to-nation framework in Canadian society by working to achieve the Canadian government's endorsement and implementation of the UN Declaration on the Rights of Indigenous Peoples. Increasingly, endorsement of the Declaration - without conditions - is seen as an essential step in implementing the Canadian government apology to former students of Indian residential schools. Work on the UN Declaration takes many forms—educating in church and society about the Declaration, lobbying for endorsement of the Declaration by the Canadian government, equipping advocates with the capacity to lobby provinces and institutions for the adoption of the Declaration. Much of this work is done in conjunction with Indigenous and non-Indigenous organizations that are part of the **Ad Hoc Coalition on the UN Declaration**. Implementation of the UN Declaration, with a specific focus on free, prior and informed consent, will be a key aspect of the KAIROS public engagement campaign of 2010-2011 – *The Land, Our Life*. This campaign will build towards national events in June 2011 on the 15th anniversary of the Royal Commission on Aboriginal Peoples report and the 10th anniversary of the Jubilee Blanket Train action.

B. Self-determination, Free Prior and Informed Consent: Respecting and protecting Indigenous cultures, traditions and values through the enforcement of Indigenous land rights, and the recognition of Indigenous peoples' right to self-determination, including the right to free, prior and informed consent.

The Church Leaders' Tar Sands Delegation led KAIROS to establish a relationship with the community of **Fort Chipewyan**, Alberta. This community includes two First Nations—**The Mikisew Cree** and the **Athabasca Chipewyan**. The community is deeply affected by the massive Athabasca Tar Sands Development. In their encounters with the government and industry as they relate to Tar Sands expansion, these communities were denied appropriate prior consultation, and currently do not have access to the research on health and ecological impacts that would permit them to make an informed decision. KAIROS will work with this community to advocate for the research required, and to defend the principle of free, prior and informed consent. While this represents the key case example on which we will focus our advocacy, we have been also involved to a lesser extent in solidarity action related to the impact of the tar sands and other resource extraction on the **Akaiitcho Dene** in Northwest Territories, as well as on the **Lubicon Cree** in northern Alberta.

In this work, we can make strong policy and educational connections between experiences of lack of free, prior and informed consent related to Indigenous partners in countries such as Guatemala and the Philippines and the experiences of Indigenous communities in Canada.

Free, prior and informed consent is one aspect of self-determination. The Harvard Project on American Indian Economic Development (2005) found that being able to exercise the right to self-determination is as important, or in some cases more important, to strengthening and improving the socio-economic conditions of Indigenous peoples than the community's location or land base. As an example, **Nishnawbe Aski Nation** in Ontario is seeking church and KAIROS support for its campaign to change the mining legislation of Ontario so that it recognizes Indigenous rights, including the right to free, prior and informed consent.

KAIROS continues to work with communities, civil society and Indigenous organizations to enhance understanding of how government policies and practices, in particular those pertaining to self-determination, impact Indigenous poverty and marginalization, including in the areas of education, health, housing and economic development.

C. Land Rights: The timely establishment of a just process for concluding comprehensive land rights negotiations, including revising the federal Comprehensive Land Claims Policy to remove the policy of extinguishment or "non-assertion" of rights. The establishment of an independent land claims process to resolve specific claims in a just and timely manner. .

The 1996 Report of the Royal Commission on Aboriginal Peoples (RCAP) probed social conditions among Aboriginal people, and presented a picture that continues to be unacceptable in a country that the United Nations regularly rates as one of the best places in the world to live. However, in addressing these issues RCAP concluded that Indigenous people "...do not want pity or hand-outs. They want recognition that these problems are largely the result of the loss of their lands and resources, destruction of their economies and social institutions, and denial of their nationhood. They seek a range of remedies for these injustices, but most of all, they seek control of their lives." RCAP also said an adequate land and resource base is essential – and the only sustainable way - to enable Indigenous peoples to rebuild their communities and societies.

KAIROS' work on land rights has included a long history of solidarity with the **Lubicon Cree**. Most recently, KAIROS joined Amnesty International and the Canadian Friends Service Committee (Quakers) in accompanying three Lubicon teenagers to New York for meetings with members of the UN Human Rights Committee. The

occasion marked the 20th anniversary of the Committee's 1990 observation that the government of Canada was violating the rights of the **Lubicon** people by allowing resource extraction to continue without a land rights agreement. The **Lubicon** have been trying to conclude a land rights settlement since the early thirties.

The churches' justice relationship with the **Dene** peoples was renewed in the Spring 2010 when former Akaitcho Chief Fred Sangris joined the KAIROS *Climate Justice* delegation and hosted an event in Yellowknife. The Akaitcho are negotiating the implementation of their 1900 Treaty, and clarifying ownership, management and rights to lands and resources.

D. Ensuring the safety of Indigenous women in Canada: *Eliminate the discrepancy in the response of authorities to violence experienced by Indigenous and majority society women, bring those responsible to justice, and address the marginalization and poverty that exacerbate violence against Indigenous women.*

For the last 5 years, KAIROS has partnered with the Native Women's Association of Canada and Amnesty International in **Sisters In Spirit**, a national initiative to raise awareness of the over 580 Indigenous women in Canada who have gone missing or have been murdered in the last three decades. As well as continuing our participation in the yearly vigils, public statements and national advocacy initiatives, KAIROS will strive to build and strengthen relationships with Indigenous women with whom we could explicitly partner to forward research, policy development, advocacy and education on this theme.

This work on gender-based violence in the Canadian context links to KAIROS *Women of Courage* work in the Democratic Republic of the Congo, Sudan, Philippines, Colombia and Israel-Palestine that highlights the relationship between conflict and gender-based violence and profiles the courageous work of women human rights defenders.

Many of the above issues are related to implementation of the Royal Commission on Aboriginal Peoples (RCAP). KAIROS remains committed to the implementation of recommendations from this crucial federal commission, now nearing its 15th anniversary.

Indigenous Rights Training: Building an Allies Network

Our attempts to advance these policy objectives both nationally and through community cases, has revealed a persistent lack of Government attention to these matters. Indigenous rights issues need to be owned more broadly in Canadian society to increase the number of voices urging fundamental change in government policies and practices.

A fundamental transformation in the situation facing Indigenous peoples in Canada will require not only change at the government level, but at the individual level as well. This includes addressing persistent racism that is both systemic and institutional, and personal. The 1996 RCAP Report concluded that public education is key to realizing a renewed relationship between Aboriginal and non-Aboriginal peoples. It identified religious institutions as having great potential to foster awareness and understanding. In 2010, this need is only more urgent.

Given this need for transformative education, KAIROS will engage in an Indigenous rights training project with the goal of building an allies network of Indigenous Rights activists from within the church constituencies. Strategies related to the training project will include:

- A. **Responding to requests from interested groups:** KAIROS will prioritize church and youth constituencies in responding positively to requests for education on Indigenous Rights. These include presentations at regional and national church events (e.g., Montreal Conference of the UCC, General Synod of the ACC, Uniting General Council of the World Alliance of Reformed Churches). We will link back with the groups that have received training with specific invitations for action and to participate in our allies' network.
- B. **KAIROS Indigenous Rights training workshops:** KAIROS will hold a series of two-day training workshops leading to community, provincial and national action. These workshops will link Indigenous issues to human rights legislation, encourage relationships between Indigenous and non-Indigenous peoples, and increase capacity for advocacy, including long term participation in a KAIROS allies' network. They are intended to be transformative, by encouraging leadership in challenging racist or colonizing premises that sadly continue to exist in some majority Canadian minds and hearts.

KAIROS Indigenous Rights education—ecumenical, rights-based and action-oriented—is intended to complement (but not duplicate) denominational education strategies on truth and reconciliation regarding residential schools.

Appendix: Terminology

Indigenous peoples:

The term “Indigenous peoples” refers to the original peoples of Canada who belong to historic, cultural and political entities. This term is synonymous with “Aboriginal peoples”. Canada’s *Constitution Act, 1982* recognizes three groups of Aboriginal peoples: First Nations, Inuit and Métis. The term Aboriginal is unique to Canada. In 2007, in response to Indigenous partners in Canada and internationally, the KAIROS Aboriginal Rights Committee proposed changing its name to the KAIROS Indigenous Rights Committee to (1) display solidarity with Indigenous peoples internationally; (2) distance itself from the policies and practices of the federal government of Canada; (3) reflect the ongoing evolution of how Indigenous peoples self-identify and are identified. That proposal was accepted and has been implemented in different aspects of KAIROS Aboriginal, now Indigenous, program.

Free, Prior and Informed Consent:

There is no reference to veto in the UN Declaration on the Rights of Indigenous Peoples and the right to free, prior and informed consent, as expressed in the Declaration, is not automatically a veto since it is a human right that exists relative to the rights of others and must be interpreted in the context of the extensive body of human rights protections under international law. Its intent is to enable Indigenous peoples to participate on an equal footing in decisions that affect them. The Declaration also contains more extensive and explicit balancing provisions than any other international human rights instrument. Many of these provisions were drafted with the assistance of Government of Canada officials.

Non-assertion of rights:

When the federal government negotiates with Indigenous peoples who have not ceded title to their traditional lands it’s called a *comprehensive claim*. Canada’s Comprehensive Land Claims policy requires the First Nation to give up its title and rights to the vast majority of its lands in return for a specified set of rights and a tiny fraction of their traditional territories. While Canada no longer uses the word “extinguishment,” its current approach has the same effect. Under the “non-assertion model” the Indigenous group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Indigenous rights. Canada’s recent attempts to explain their “non-assertion” policy at the United Nations met with criticism from human rights experts who

concluded that asking Indigenous people to agree to never assert their rights was tantamount to extinguishing those rights.

Achieving legal certainty should not result in the violation of human rights or require a peoples to surrender their inherent rights. In 2007, in its report to the UN Committee on the Elimination of Racial Discrimination (CERD) the Government of Canada said: "Certainty with respect to the content and scope of ownership of land and rights to use land and resources is one of the primary goals" of the Comprehensive Land Claims Policy.ⁱⁱⁱ This particular approach to achieve "certainty" has been condemned by the UN Committee on Economic, Social and Cultural Rights (CESCR), the UN Human Rights Committee, and the Committee on the Rights of the Child. In 1998, CESCR recommended that "policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party."^{iv} Extinguishment also violates several significant principles of Canadian law and the Constitution (section 35), which recognize and affirm the treaty and inherent rights of Aboriginal peoples, including the right of self-determination.

Despite repeated requests by various UN Treaty Bodies, the government of Canada seems to be moving towards broadening the scope of extinguishment. For their part, Indigenous peoples continue to seek a process where Indigenous title and rights to land are acknowledged, and where resource revenue sharing is a consequence of negotiating treaties with governments. In its 2007 submission to the UN CERD, KAIROS recommended that the Canadian government:

- Use Recommendation 2.2.6 of the Royal Commission on Aboriginal Peoples as the basis for a new comprehensive claims policy: *The federal government establish a process for making new treaties to replace the existing comprehensive claims policy, based on the following principles:*
 - (a) *The blanket extinguishment of Aboriginal land rights is not an option.*
 - (b) *Recognition of rights of governance is an integral component of new treaty relationships.*
 - (c) *The treaty-making process is available to all Aboriginal nations, including Indian, Inuit and Métis nations.*
 - (d) *Treaty nations that are parties to peace and friendship treaties that did not purport to address land and resource issues have access to the treaty-making process to complete their treaty relationship with the Crown.*

ⁱ McKay, Stan. "Aboriginal relationships to the Land and the Jewish Teachings of Jubilee". Restoring Right Relations. Canadian Ecumenical Jubilee Initiative. 2000.

ⁱⁱⁱ See Canadian Churches. "A New Covenant: Towards the Constitutional Recognition and Protection of Aboriginal Self-Government in Canada, A Pastoral Statement by the Leaders of the Christian Churches on Aboriginal Rights and the Canadian Constitution". Signed by on February 5, 1987 and reaffirmed on March 9, 2007

ⁱⁱⁱ 17th and 18th periodic reports to CERD, CERD/C/CAN/18, 5 April 2006, page 13, paragraph 38.

^{iv} *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1Add.31, paragraph 18. *Concluding Observations of the Committee the Elimination of Racial Discrimination*, UN CERD, 2002, A/57/18, paragraphs 330-331. *Concluding Observations of the Committee on the Rights of the Child*, UN CRC, 2003, CRC/C/15/Add 215, paragraph 59.