
RECLAIMING GROUND: INDIGENOUS SELF-DETERMINATION AS THE CORNERSTONE OF ENVIRONMENTAL JUSTICE

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ABSTRACT

Environmental justice scholarship has traditionally centred distributive and procedural fairness in the allocation of environmental burdens and benefits. This paradigm, however, has often failed to reckon with the foundational role of colonial dispossession in producing the very environmental harms it purports to remedy. This paper argues that Indigenous self-determination understood as the substantive authority of Indigenous peoples to govern their lands, waters, and knowledge systems is not merely one input into environmental justice but its structural precondition. Drawing on comparative jurisprudence from Canada, India, Brazil, and international climate governance, the paper traces how courts, multilateral institutions, and Indigenous movements have reconfigured the relationship between sovereignty, territory, and ecological stewardship between 2024 and 2026. It examines recent landmark developments, including the British Columbia Court of Appeal's ruling in *Nuchatlaht v. British Columbia* recognising Aboriginal title over a substantial portion of Nootka Island, the Supreme Court of British Columbia's decision in *Cowichan Tribes v. Canada* recognising Aboriginal title over lands held in fee simple for the first time in Canadian history, the Gitxaala ruling on the binding legal force of the Declaration on the Rights of Indigenous Peoples Act, the Supreme Court of India's engagement with the tension between the Forest Rights Act, 2006 and the Forest (Conservation) Act, 1980 in *Sugra Adiwasi v. Pathranand*, and the contested outcomes for Indigenous peoples at COP30 in Belém. The paper further engages with the emerging framework of Indigenous Environmental Data Justice, which reframes data and knowledge governance as an extension of self-determination rather than a purely technical or scientific concern. Situating these developments within the normative architecture of the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organisation Convention No. 169, the paper contends that free, prior and informed consent, secure land tenure, and jurisdictional autonomy together operate as the minimum conditions for meaningful environmental justice. It concludes by identifying persistent fault lines including political and industry backlash against Aboriginal title litigation, the unresolved tension between conservation law and tribal welfare, and the continued

marginalisation of Indigenous voice within climate finance architecture and proposes a rights-based, self-determination-centred reorientation of environmental justice discourse, adjudication, and policy design.

Keywords: Indigenous self-determination; environmental justice, Aboriginal title, free, prior and informed consent, UNDRIP, Forest Rights Act, climate governance, Indigenous data sovereignty.

INTRODUCTION

The modern environmental justice movement emerged in the United States in the 1980s out of the civil rights struggle against racial segregation, crystallizing around the finding that hazardous waste facilities were disproportionately sited in communities of colour.¹ That origin story, while foundational, has produced an environmental justice paradigm oriented chiefly around the distribution of environmental "bads" and the procedural inclusion of affected communities in decision-making. It has been slower to confront a prior and more structural question: who holds the authority to decide what happens to land, water, and ecosystems in the first place. For Indigenous peoples, that question is not academic. Centuries of displacement, forced assimilation, and the imposition of colonial property regimes have severed Indigenous nations from the very territories whose ecological integrity environmental justice seeks to protect.

This paper argues that Indigenous self-determination is not simply one strand within a broader environmental justice agenda; it is the cornerstone upon which any credible claim to environmental justice for Indigenous peoples must rest. Self-determination the authority to make one's own decisions, determine political status, and be free of external domination has historically anchored decolonisation and state-building projects, but it now increasingly frames Indigenous claims to autonomy, land, and governance.² Where colonial dispossession severed Indigenous peoples from land-based governance, restoring self-determination reconnects legal authority with ecological responsibility. The central claim advanced here is that without secure jurisdiction over land, resources, knowledge, and data environmental justice for Indigenous peoples collapses into consultation without consent and recognition without redistribution of

¹Commission for Racial Justice, United Church of Christ, *Toxic Wastes and Race in the United States* (1987), discussed in Commission for Environmental Cooperation, *Environmental Justice*, <https://www.cec.org/topics/environmental-justice/> (last visited July 2026).

²International Institute for Democracy and Electoral Assistance (International IDEA), *Self-determination for Indigenous Peoples*, <https://www.idea.int/news/self-determination-indigenous-peoples> (last visited July 2026).

power.

The analysis proceeds in seven parts. Part II develops a conceptual framework distinguishing Indigenous self-determination from the conventional distributive and procedural conception of environmental justice. Part III surveys the international normative architecture principally the UN Declaration on the Rights of Indigenous Peoples and International Labour Organisation Convention No. 169 that has begun to translate self-determination into enforceable standards. Part IV examines the rapidly evolving Canadian jurisprudence on Aboriginal title, culminating in the 2025-2026 rulings in Nuchatlaht, Cowichan Tribes, and Gitxaala. Part V turns to India, tracing the contested relationship between the Forest Rights Act, 2006 and forest conservation law. Part VI considers the global climate governance arena, focusing on the outcomes for Indigenous peoples at COP30 in Belém. Part VII identifies the recurring fault lines across these developments and proposes a self-determination-centred reorientation of environmental justice.

CONCEPTUAL FRAMEWORK: SELF-DETERMINATION AS THE PRECONDITION OF ENVIRONMENTAL JUSTICE

Contemporary scholarship increasingly cautions against conflating Indigenous environmental justice with the generic environmental justice framework developed in North American civil rights litigation. Indigenous Environmental Data Justice (IEDJ), a framework recently articulated by Yanchapaxi and Murphy, insists that Indigenous land defence and data governance are not reducible to environmental justice claims because they proceed from distinct onto-epistemologies: obligations to land, water, sky, non-human kin, and ancestors that do not treat human health and ecological health as separable domains.³ On this account, data itself is relational rather than a neutral instrument of measurement; it is inseparable from governance, and its collection, ownership, and interpretation are themselves manifestations or denials of Indigenous self-determination.

These reframing matters because it locates the harm not merely in unequal exposure to pollution or unequal participation in decision-making, but in the erasure of Indigenous governance authority itself. As Hernandez and Shange observe in their special issue on

³María Fernanda Yanchapaxi & M. Murphy, *Indigenous Environmental Data Justice: Confronting Colonial Data and Activating Indigenous Sovereignty*, *Big Data & Society* (2025), <https://journals.sagepub.com/doi/10.1177/01622439251343837>.

Indigenous peoples and environmental justice, the historical displacement and dismemberment of Indigenous peoples has left ecosystems structurally wounded, with the erasure of Indigenous knowledge systems from conservation and environmental frameworks creating a vacuum filled by extractive economies that treat land and water as commodities rather than kin.⁴ Drawing on Linda Tuhiwai Smith's foundational work on decolonising methodologies, the special issue underscores that Indigenous research and knowledge production must itself be rooted in self-determination, not merely incorporated as a data point within externally designed environmental governance frameworks.⁵

Two implications follow. First, environmental justice frameworks that centre only distribution (who bears the pollution burden) and procedure (who is consulted) risk reproducing colonial hierarchies even while purporting to remedy environmental harm, because they leave final decision-making authority with the state or corporate actor and merely mandate that Indigenous voices be "heard." Second, a self-determination-centred approach requires recognition of jurisdiction the authority to say no, to set terms, and to govern land, resources, and data according to Indigenous law rather than a right to be consulted before decisions are made by others. The remainder of this paper traces how this distinction plays out across international law, comparative jurisprudence, and global climate governance.

THE INTERNATIONAL NORMATIVE ARCHITECTURE

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, provides the principal international articulation of Indigenous self-determination. Article 3 affirms that Indigenous peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social, and cultural development. Article 26 recognises rights to the lands, territories, and resources that Indigenous peoples have traditionally owned or used, while Article 32 requires states to obtain free, prior and informed consent (FPIC) before approving projects affecting Indigenous lands, territories, or resources, particularly in connection with the development, utilisation, or exploitation of mineral, water, or other resources.⁶

⁴Jessica Hernandez & Nombulelo Tholithemba Shange, Special Issue: Indigenous Peoples and Environmental Justice, *Environment and Society* (2025), <https://journals.sagepub.com/doi/10.1177/19394071251407901>.

⁵Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (1999), as discussed in Hernandez & Shange, *supra*.

⁶United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295

International Labour Organisation Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989) predates UNDRIP and remains the only binding multilateral treaty dedicated to Indigenous rights, imposing obligations of consultation in good faith and participation in decisions affecting Indigenous peoples' lands and resources.⁷ Read together, UNDRIP and ILO 169 establish FPIC as the operative mechanism through which self-determination is meant to translate into practical veto or consent authority over environmentally significant decisions. Yet FPIC's practical force depends entirely on domestic implementation a dependency that the Canadian and Indian case studies below illustrate with particular clarity.

COMPARATIVE JURISPRUDENCE I: ABORIGINAL TITLE IN CANADA

Canadian jurisprudence on Aboriginal title has undergone a rapid and consequential evolution since the Supreme Court of Canada's 2014 decision in *Tsilhqot'in Nation v. British Columbia*, which for the first time granted a declaration of Aboriginal title over a specific territory and articulated a test based on sufficient, exclusive, and continuous occupation prior to the assertion of Crown sovereignty.⁸ Three developments between 2025 and 2026 have substantially expanded and tested the practical reach of that framework.

Nuchatlaht v. British Columbia

In April 2026, the British Columbia Court of Appeal issued a landmark ruling recognising Aboriginal title for the Nuchatlaht over approximately 210 square kilometres of Nootka Island, overturning a lower court decision that had confined title to a narrow coastal strip.⁹ The Court of Appeal rejected the trial judge's restrictive, site-specific approach to "sufficient occupation," reaffirming the territorial approach set out in *Tsilhqot'in* and clarifying that Indigenous claimants need not demonstrate use of every discrete parcel within a territory to establish title over the whole. The decision is significant for coastal First Nations in particular, where colonial settlement patterns and evidentiary gaps have historically made site-by-site proof of occupation difficult to sustain.

(Sept. 13, 2007), arts. 3, 26, 32.

⁷International Labour Organisation Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 1650 U.N.T.S. 383.

⁸*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257.

⁹*Nuchatlaht v. British Columbia*, 2026 BCCA 137.

Cowichan Tribes v. Canada

The most consequential and most contested of the recent rulings is *Cowichan Tribes v. Canada* (Attorney General), decided by the Supreme Court of British Columbia in August 2025 after what is reported to be the longest trial in Canadian history.¹⁰ The court recognised Aboriginal title held by the Quw'utsun Nation (comprising the Cowichan Tribes, Stz'uminus, Penelakut, Halalt, and Lyackson) over lands at Tl'uqtinus on Lulu Island, including lands currently held in fee simple – the first time a Canadian court has recognised Aboriginal title over privately registered land, with attendant implications for title over submerged lands used for fishing on the Fraser River.¹¹ The ruling characterised Aboriginal title as a "senior interest" relative to fee-simple title, provoking alarm among private landowners, municipalities, and industrial occupiers in Richmond, British Columbia, and prompting the federal and provincial governments, along with the City of Richmond, to appeal.

The public reaction to *Cowichan* illustrates the political volatility that attends the translation of self-determination into concrete property consequences. Commentary in the Fraser Institute and elsewhere warned of a looming "property crisis" and questioned the security of registered titles across the province.¹² Indigenous legal commentators pushed back forcefully against what they characterised as fear-mongering, with the Indigenous Bar Association cautioning that reconciliation cannot be paused and must instead be practiced, and the Quw'utsun Nation clarifying that its litigation targeted Crown administrative failures rather than individual homeowners.¹³ Legal analysts have similarly emphasised that the decision followed a full five-year trial in which all affected parties participated, and that it does not, of itself, extinguish the title of landowners who were not party to the litigation.

Gitxaala v. British Columbia and the Legal Force of UNDRIP

A parallel and equally significant development concerns the domestic legal status of UNDRIP itself. In *Gitxaala v. British Columbia* (Chief Gold Commissioner), the British Columbia Court

¹⁰*Cowichan Tribes v. Canada* (Attorney General), 2025 BCSC 1490.

¹¹Ariane Savard, Student Column: A Comprehensive Summary of *Cowichan Tribes v. Canada* (2025), Canadian Institute for the Administration of Justice (Apr. 7, 2026), <https://ciaj-icaj.ca/en/2026/04/07/a-comprehensive-summary-of-cowichan-tribes-v-canada/>.

¹²Bruce Pardy, Courts and governments caused B.C.'s property crisis – they're not about to fix it, Fraser Institute (Nov. 14, 2025).

¹³Victoria Wicks & Jaclyn McNamara, The Cowichan ruling isn't a threat to private property, Policy Options (Dec. 8, 2025), <https://policyoptions.irpp.org/2025/12/cowichan-land-ruling-explained/>.

of Appeal confirmed that the province's Declaration on the Rights of Indigenous Peoples Act (DRIPA) incorporates UNDRIP into the positive law of British Columbia with immediate legal effect, rejecting the view that DRIPA is merely aspirational policy.¹⁴ The Court held that DRIPA creates a binding Crown commitment to align provincial law with UNDRIP through consultation and cooperation, generating a presumption that provincial legislation should conform to the Declaration and empowering courts to assess statutory consistency with it. Applying this framework, the Court found British Columbia's automated mineral claim registration system inconsistent with UNDRIP because it permitted the granting of mineral claims without prior consultation a direct application of the FPIC principle embedded in Article 32. The decision marks a significant doctrinal shift: UNDRIP's role has moved from an interpretive aspiration invoked in argument to an operative legal standard against which domestic resource-allocation regimes can be measured and found wanting.

The Countervailing Pressure: Wolastoqey Nation and the Limits of Title

Not all recent developments have expanded Aboriginal title's reach. In December 2025, the New Brunswick Court of Appeal ruled that Aboriginal title cannot be declared over privately owned land, reasoning that to do so would jeopardise reconciliation with non-Indigenous interests. The Supreme Court of Canada declined to hear the Wolastoqey Nation's appeal against that ruling in May 2026, leaving the New Brunswick position intact, at least in that province.¹⁵ The federal Crown-Indigenous Relations department indicated that it regards the New Brunswick position as relevant to the pending Cowichan appeal, framing the refusal of leave as reinforcing the primacy of private property rights even as it left the broader national question about title over private land formally unresolved for jurisdictions, such as British Columbia, where claims have been fully tried on the merits rather than struck out at a preliminary stage.

Read together, the Canadian cases demonstrate both the transformative potential and the structural fragility of rights-based Aboriginal title litigation as a vehicle for self-determination. Title recognition restores jurisdictional authority in a manner that consultation regimes cannot, but its scope remains contingent on shifting judicial composition, provincial politics, and the countervailing weight accorded to settler property interests precisely the tension that a

¹⁴Gitxaala v. British Columbia (Chief Gold Commissioner), 2025 BCCA 430.

¹⁵Canada's top court leaves private-land Aboriginal title ruling intact, ICLG (May 29, 2026), <https://iclg.com/news/canadas-top-court-leaves-private-land-aboriginal-title-ruling-intact/>.

genuinely self-determination-centred environmental justice framework must confront rather than paper over.

COMPARATIVE JURISPRUDENCE II: FOREST RIGHTS AND CONSERVATION LAW IN INDIA

India presents a structurally different but analytically parallel contest between Indigenous (Adivasi and other traditional forest-dwelling) self-determination and state-administered environmental governance. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("FRA") was enacted to redress the historical injustice of excluding forest-dwelling communities from land and resource rights during colonial and post-colonial forest administration.¹⁶ Its most significant institutional innovation is the vesting of individual and community forest resource (CFR) rights through the Gram Sabha, the village-level democratic body, thereby decentralising forest governance authority to the community rather than the forest bureaucracy.

The FRA's implementation has repeatedly collided with the older Forest (Conservation) Act, 1980 ("FCA"), which requires central government approval for any non-forest use of forest land.¹⁷ In *Sugra Adiwasi v. Pathranand*, decided on 23 September 2025, the Supreme Court of India confronted the question whether forest dwellers could construct permanent ("pakka") dwelling houses on forest land recognised under the FRA without separate clearance under the FCA.¹⁸ A bench comprising Justices P.S. Narasimha and Atul S. Chandurkar declined to read either statute as impliedly repealing or overriding the other, holding instead that the FRA's social justice function and the FCA's conservation function must be harmonised, and directing the Union Government to devise a structured mechanism reconciling permanent housing rights for forest dwellers with forest conservation safeguards.¹⁹

The *Sugra Adiwasi* order should be read against the backdrop of a long-pending constitutional challenge to the FRA itself in *Wildlife First v. Union of India*, in which conservationist petitioners have sought to have the Act struck down as beyond legislative competence and

¹⁶Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007 (India).

¹⁷Forest (Conservation) Act, 1980, No. 69 of 1980 (India).

¹⁸*Sugra Adiwasi & Ors. v. Pathranand & Ors.*, Civil Appeal No. 2590 of 2019 (Supreme Court of India, Sept. 23, 2025).

¹⁹Supreme Court Examines Conflict Between Forest Rights Act and Forest Conservation Act on Tribal Housing, *Mondaq* (Oct. 15, 2025), <https://www.mondaq.com/india/climate-change/1691772>.

inconsistent with the Wildlife (Protection) Act, 1972, while forest-dwelling communities have resisted eviction under the Supreme Court's dormant 2019 order pending resolution of that claim.²⁰ The recurring pattern conservation law invoked as a shield against tribal claims, and tribal welfare invoked as a ground for diluting protective forest law reproduces at the domestic level precisely the false binary that Indigenous Environmental Data Justice scholarship warns against: treating ecological protection and Indigenous self-determination as competing rather than mutually constitutive goals.

Ground-level evidence from Odisha suggests that this binary is empirically unfounded. Community Forest Resource rights recognised under the FRA in villages such as Soura Kurlanda, Kalakani, and Pajilibandha have coincided with reduced illegal logging, strengthened Gram Sabha-led forest protection committees, and improved community livelihoods, indicating that secure tenure and community governance authority rather than exclusionary conservation enforcement can produce superior ecological outcomes.²¹ This evidence directly supports the paper's central claim: self-determination expressed here as community forest governance rather than title in the Canadian sense functions as a precondition for, rather than an obstacle to, effective environmental stewardship.

GLOBAL CLIMATE GOVERNANCE: INDIGENOUS PEOPLES AT COP30

The thirtieth Conference of the Parties to the UN Framework Convention on Climate Change, held in Belém, Brazil in November 2025, offered the clearest recent test of whether multilateral climate governance can operationalize Indigenous self-determination rather than merely symbolic recognition. Held for the first time in the Amazon, COP30 saw the largest Indigenous participation in the history of the negotiations, with approximately 5,000 Indigenous representatives present, including roughly 900 within the official Blue Zone negotiating space.²² The principal outcome document, the Global Mutirão, for the first time explicitly linked climate finance, just transition, and mitigation commitments to respect for Indigenous peoples' human rights and land rights in its preamble, a textual placement that Indigenous

²⁰Constitutionality of the FRA, Supreme Court Observer (July 28, 2025), <https://www.scobserver.in/cases/constitutionality-of-the-fra-wildlife-first-v-ministry-of-forest-and-environment-eviction-of-forest-dwellers-background/>.

²¹Supreme Court Impact: Forest Rights Act's Challenges for Tribal Communities, Down to Earth (June 24, 2025), <https://www.downtoearth.org.in/forests/how-the-supreme-court-order-on-forest-rights-act-impacts-its-implementation-and-forest-dependent-communities>.

²²Unmistakable Message at COP30 in Belém: Indigenous Peoples' Rights Are Non-Negotiable, Cultural Survival (2025), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/unmistakable-message-cop30-belem-indigenous-peoples-rights>.

delegates argued effectively binds every subsequent operative paragraph to that commitment.

Concrete outcomes included a pledge of approximately \$1.8 billion from more than thirty-five governments and philanthropic organizations to secure land rights for Indigenous peoples, local communities, and Afro-descendant communities across forest and other ecosystems, and the Brazilian government's announcement of ten new Indigenous territories, one of which reportedly encompasses over seventy-eight per cent of the Amazon National Park.²³ The Just Transition Work Programme was likewise updated to reference obligations toward Indigenous peoples, including those in voluntary isolation, and the decision on Article 6.4 carbon markets called for Indigenous consultation in the design of the market's governance architecture.²⁴

Yet the summit's own Indigenous participants were candid about the limits of this recognition. Sara Olsvig, chair of the Inuit Circumpolar Council, observed that the negotiations reflected a focus on symbolic presence rather than full and effective participation, while one delegate described the experience more bluntly as being "visible but not empowered."²⁵ Substantively, the final text omitted any roadmap to phase out fossil fuels despite more than eighty countries backing one, omitted a deforestation roadmap despite support from over ninety countries, and dropped references to the mining of critical minerals notwithstanding the disproportionate impact of mineral extraction on Indigenous territories – omissions that Indigenous negotiators characterised as a capitulation to fossil fuel and extractive-industry lobbying.²⁶ The Tropical Forests Forever Facility, a flagship Brazilian finance mechanism launched at the summit, was itself rejected by a coalition of more than 150 civil society and Indigenous organisations on the ground that it had not been multilaterally agreed and did not prioritise Indigenous peoples and local communities in its design.²⁷

The Indigenous Navigator's 2026 edition of *The Indigenous World*, launched at the UN Permanent Forum on Indigenous Issues in April 2026, situates these climate-specific

²³COP30: Key outcomes for food, forests, land and nature at the UN climate talks in Belém, Carbon Brief (Nov. 28, 2025), <https://www.carbonbrief.org/cop30-key-outcomes-for-food-forests-land-and-nature-at-the-un-climate-talks-in-belem/>.

²⁴COP30: Outcomes, Disappointments and What's Next, World Resources Institute (2025), <https://www.wri.org/insights/cop30-outcomes-next-steps>.

²⁵Indigenous people reflect on meaning of their participation in COP30 climate talks, PBS News (Nov. 23, 2025), <https://www.pbs.org/newshour/world/indigenous-people-reflect-on-meaning-of-their-participation-in-cop30-climate-talks>.

²⁶What was achieved for Indigenous peoples at COP30?, Mongabay (Nov. 27, 2025), <https://news.mongabay.com/2025/11/what-was-achieved-for-indigenous-peoples-at-cop30/>.

²⁷COP30: Key outcomes for food, forests, land and nature, *supra* note 24.

developments within a broader monitoring framework of over 150 indicators tracking Indigenous peoples' civil, political, social, economic, and cultural rights under UNDRIP, ILO Convention 169, and the Sustainable Development Goals, including newly developed thematic modules on biodiversity, climate change, and human rights and environmental due diligence.²⁸ Such data infrastructure, built and controlled by Indigenous organisations rather than external agencies, is itself an instance of the Indigenous Environmental Data Justice this paper identifies as central to self-determination: the capacity to define, collect, and interpret the metrics by which one's own rights are assessed.

RECURRING FAULT LINES AND A SELF-DETERMINATION-CENTRED REORIENTATION

Three recurring fault lines emerge across the jurisdictions examined. First, a persistent framing of Indigenous jurisdiction as a threat to settler or state property and economic interests, evident in the Canadian backlash to Cowichan and in the New Brunswick and federal government's emphasis on the primacy of private property rights following the Wolastoqey decision. Second, a persistent statutory and doctrinal tendency to treat conservation and Indigenous welfare as competing objectives requiring judicial "balancing," as in the Indian FRA-FCA jurisprudence, notwithstanding ground-level evidence that community forest governance improves ecological outcomes. Third, a persistent gap between symbolic recognition and enforceable authority in multilateral climate governance, illustrated by COP30's textual acknowledgment of Indigenous rights alongside its silence on fossil fuels, mining, and binding land-rights guarantees.

These fault lines share a common structure: each treats Indigenous self-determination as a claim to be weighed against competing state, market, or conservation interests, rather than as the jurisdictional baseline from which environmental governance ought to proceed. A self-determination-centred reorientation of environmental justice would instead require, at minimum: (i) legal recognition of land tenure and title that is not contingent on the absence of countervailing private or state interests, but is instead reconciled with those interests through negotiated, Indigenous-led processes, as the Haida Gwaii agreement in British Columbia illustrates;²⁹ (ii) treatment of free, prior and informed consent as a binding requirement rather

²⁸The Indigenous World 2026: The Indigenous Navigator Self Determined Development, Indigenous Navigator (2026), <https://indigenousnavigator.org/publication/the-indigenous-world-2026-the-indigenous-navigator-self-determined-development>.

²⁹Wicks & McNamara, *supra* note 15 (discussing the negotiated recognition of Aboriginal title over Haida Gwaii alongside preserved private ownership).

than a consultative courtesy, following the doctrinal trajectory of Gitxaala; (iii) statutory harmonisation frameworks, of the kind directed in Sugra Adiwasi, that are designed from the outset to avoid pitting tribal welfare against ecological protection; and (iv) Indigenous control over the data, indicators, and monitoring frameworks such as the Indigenous Navigator used to assess compliance with environmental and human rights commitments, so that Indigenous peoples are not merely subjects of environmental governance but its authors.

CONCLUSION

The environmental justice movement's original insight that environmental harm is never randomly distributed but tracks existing structures of power applies with particular force to Indigenous peoples, for whom the relevant structure of power is the unresolved architecture of colonial dispossession. The comparative evidence surveyed in this paper, spanning Aboriginal title litigation in Canada, forest rights jurisprudence in India, and Indigenous participation in global climate negotiations, demonstrates both the growing legal traction of Indigenous self-determination and the persistence of institutional and political resistance to its full realisation. Courts in British Columbia have begun to treat UNDRIP as binding law rather than aspirational text; forest-dwelling communities in Odisha have shown that community governance can outperform exclusionary conservation; and Indigenous delegates at COP30 secured unprecedented textual recognition even as substantive commitments on fossil fuels and mining were stripped from the final agreement. Read together, these developments suggest that environmental justice for Indigenous peoples cannot be achieved through redistribution or consultation alone. It requires restoring the jurisdictional authority over land, resources, knowledge, and data that colonisation displaced. Reclaiming that ground, in the fullest sense, is the cornerstone on which a genuinely just environmental order must be built.