ILRU Analytical Framework: Environmental Issues

Background:

The Indigenous Law Research Unit is committed to engaging with Indigenous laws as *laws*. The ILRU partners with Indigenous communities who want to access, understand and apply their own legal principles to a full range of current challenges.

To this end, the ILRU employs what is now known as the ILRU methodology, to identify and articulate Indigenous legal principles. The ILRU team uses an adapted form of common-law legal analysis to analyze a wide variety of resources, including published stories and oral histories. The results of this analysis are then synthesized into an analytical framework by organizing them in response to a consistent set of targeted questions. The completed framework provides a transparent and convenient restatement of a body of law. It is practical and also serves two major intellectual purposes. First, it focuses on the internal working details of Indigenous laws. Second, it reminds us that specific legal principles are all related parts of a comprehensive whole.
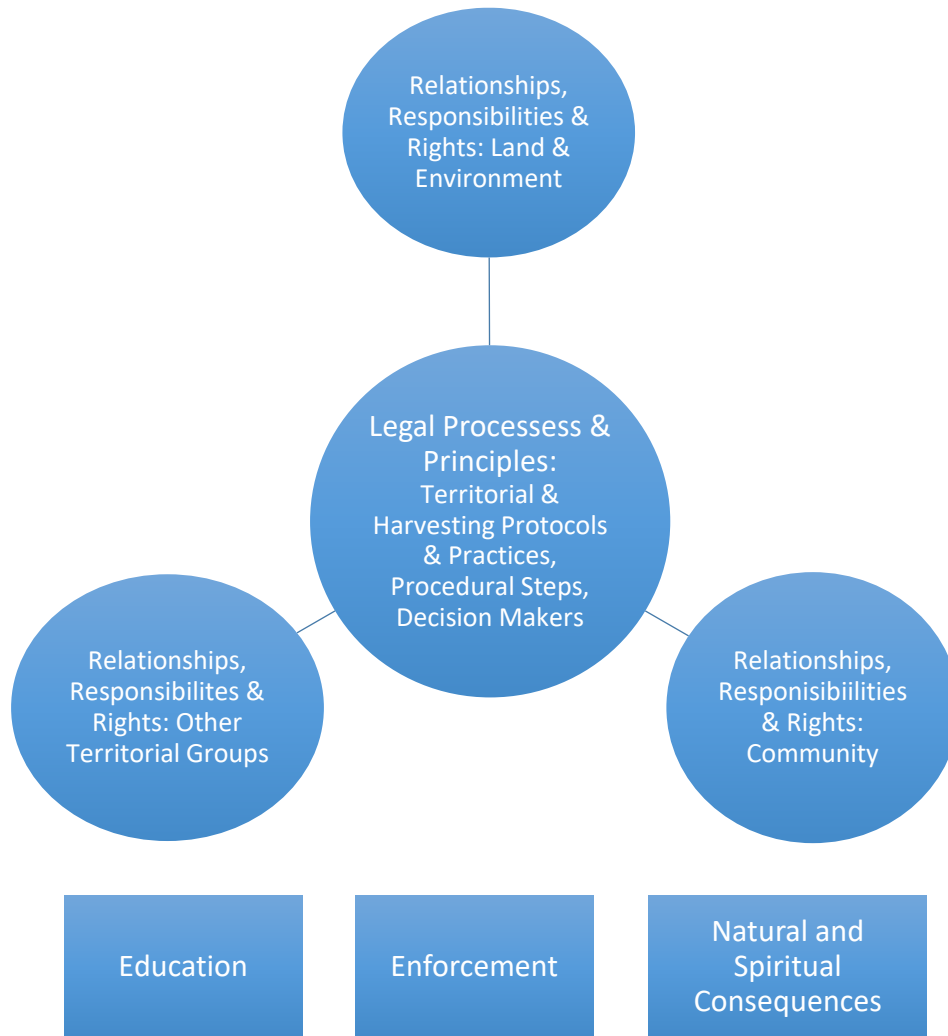
The original analytical framework was designed and implemented in relation to Indigenous legal responses to human and social issues. It proved effective in that context. However, as we began working on research questions related to lands, waters, and resources, it became apparent another framework was required to effectively capture the issues that arise in an environmental context.

The environmental analytical framework developed by Dr. Hadley Friedland identifies the principled tools Indigenous communities already use to balance and uphold multiple (and possibly conflicting) relationships, responsibilities and rights. It allows space for naming deeply held beliefs, such as relationships with a living earth, while acknowledging these must be balanced with other critical relationships, responsibilities and rights to people within and outside of Indigenous communities. Organizing research results around the questions in this framework emphasizes the balancing that occurs, and has always occurred, within communities. The discussion that emerges through this framework provides a respectful and robust alternative to polarizing declarations and oversimplified reductionist arguments.

The results from this analysis are recovered tools for governance. They create a solid foundation for revitalizing principled and productive conversations within and between communities and help communities effectively apply their own tools to address the complexity of Indigenous land and resource management issues today.

General Underlying/Animating/Foundational Principles

Relationships, Responsibilities & Rights: Land & Environment

Legal Processess & Principles:
Territorial & Harvesting Protocols & Practices, Procedural Steps, Decision Makers

Relationships, Responsibilites & Rights: Other Territorial Groups

Relationships, Responisibiilities & Rights: Community

Education

Enforcement

Natural and Spiritual Consequences

General Principles are foundational or animating, and may inform all other principles.
Education, Enforcement, and Natural & Spiritual consequences uphold and reinforce principles.
Legal Principles and Processes, such as *protocols, practices, procedures* and *decision-makers* all serve to help people to decide how to **balance relationships, responsibilities** and **rights** with, of and to *land and environment*, *other territorial groups* and *community* in a principled and legitimate way.

1. Legal Processes:

   a. **Territorial Protocols and Practices:** How do people demonstrate respect for each other's territories?

   b. **Harvesting Protocols and Practices:** How do people demonstrate respect for the natural resources they are harvesting?

   c. **Procedural Steps for Making and Maintaining Agreements or Resolving Conflicts:** What steps do people take to resolve conflicts and/or establish and maintain agreements for appropriate access and stewardship of natural resources between families or groups?

   d. **Authoritative Decision-makers:** Who has the final say? Where and over what resources?

2. Relationships, Responsibilities and Rights:

   a. Land and Natural Environment:
      - **Relationship with the Land:** What are the relationships between people and the land? Animals? Plants? Water?
      - **Responsibilities to the Land:** What are people's responsibilities to the land? Animals? Plants? Water? Are there certain individuals, families or clans who have particular responsibilities to care for certain territory or resources?
      - **Rights of the Land:** How should people be able to expect others to treat the land? Animals? Plants? Water?

   b. Other Territorial Groups:
      - **Relationships with other Territorial Groups:** What are the relationships with other groups with overlapping/adjoining territories?
      - **Responsibilities to other Territorial Groups:** What are the responsibilities to other groups with overlapping/adjoining territories? How should people act when they need to access resources within another group's territory?
      - **Rights of other Territorial Groups:** How should other groups with overlapping/adjoining territories expect people to act in their territories? How should people expect to be treated when they need to access resources within another group's territory?

   c. Community:
      - **Relationships within a Community:** What are the significant relationships related to natural resources within this group? Leaders? Vulnerable/those in need?

- **Responsibilities to others in the Community:** What are the responsibilities related to natural resources to others within the community? Leaders? Vulnerable/those in need?
- **Rights of people in the Community:** What should individuals be able to expect regarding access to needed resources? Are there certain individuals, families or clans who should expect to access or control access to certain territory or resources?

3. Consequences, Enforcement and Teaching:

   a. **Consequences:** What are the natural and spiritual consequences of accessing and sharing natural resources in a respectful and sustainable way, or of not doing so?

   b. **Enforcement:** What are consequences people have designed and implemented to ensure others are following the legal principles related to accessing and sharing natural resources?

   c. **Teaching:** What are effective ways people learn or teach others about the legal principles related to accessing and sharing natural resources?

4. **General Underlying Principles:** What underlying or recurrent themes emerge in the stories that might not be captured above?

   Note: These may be animating or foundational principles that inform the interpretation of all other principles. It may be useful to move these principles to the beginning for the final summary.