

**CU-NARF Joint Project to Implement the United Nations Declaration on the Rights of
Indigenous Peoples in the United States**

Tribal Implementation Toolkit

Produced in Partnership with UCLA School of Law

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Finally, we acknowledge the tribal governments and Native Nations that exemplify resilience and good governance. Around the world, and throughout the U.S., Indigenous Peoples are revitalizing custom and innovating in tribal law toward human rights and responsibilities, in relationship with all beings in the natural world.

Your example is our inspiration.

Disclaimer

The *Tribal Implementation Toolkit* is available to the general public and is intended to provide examples and inspiration to tribes seeking to implement the United Nations Declaration on the Rights of Indigenous Peoples. This document provides educational information only. It is not legal advice. You should consult competent legal counsel for legal advice, rather than rely on the *Tribal Implementation Toolkit*.



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Introduction

In 2007, the United Nations (UN) General Assembly adopted the Declaration on the Rights of Indigenous Peoples (Declaration) following decades of advocacy by Indigenous Peoples. This is a standard-setting document supported by approximately 150 States, including the United States, committed to the individual and collective rights of Indigenous Peoples, which have for so long been disregarded in legal systems around the world. The Declaration recognizes that Indigenous Peoples have rights to self-determination, equality, property, culture, religious freedom, health, and economic well-being, among many others. It calls on States to undertake legal reform that will remedy past violations and ensure current protections for Indigenous Peoples' rights.¹

The Era of Implementation

Today's challenge is to "implement" the Declaration or, stated another way, to make its promises real in the lives of Indigenous Peoples. Around the globe, Indigenous Peoples, States, and others are developing various strategies for this work. In 2020, for example, Indigenous leaders in British Columbia, Canada, successfully lobbied for legislation to bring provincial law into alignment with the Declaration.² In New Zealand, Maori and national lawmakers have joined forces in the development of a national action plan, with the assistance of the UN Expert Mechanism on the Rights of Indigenous Peoples, to implement the Declaration.³ And, in Mexico City, a new municipal constitution expressly incorporates the Declaration.⁴

In the United States, President Obama expressed support for the Declaration in 2010,⁵ ushering in a new era of opportunity for legal reform addressing injustices embodied in federal Indian law.⁶ According to John Echohawk, Executive Director of the Native American Rights Fund, tribal leaders urged President Obama to support the Declaration in the hope it would aid their advocacy efforts in domestic judicial, legislative, and administrative forums.⁷

As S. James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples, has said, "The Declaration, which is grounded in widespread consensus and fundamental human rights values, should be a benchmark for all relevant decision-making by the federal executive, Congress, and the judiciary, as well as by the states of the United States."⁸

The Native American Rights Fund and University of Colorado Law School formed the Joint Project to

¹ G.A. Res. 61/295, ¶ 12, U.N. Doc. A/RES/61/295 (Sept. 13, 2007). A complete copy of the Declaration is included in Appendix VI.

² See Appendix III.

³ Te Tari a te Minita Whanaketanga Māori, [New Zealand's Progress on the United Nations Declaration on the Rights of Indigenous Peoples: Development of National Plan](#) (February 28, 2019).

⁴ [Constitución Política del la Ciudad de México, art. 57](#) (2017). See also Mecanismo de Expertos sobre los Derechos de los Pueblos Indígenas (U.N. Expert Mechanism on the Rights of Indigenous Peoples), [Nota de Cooperación Técnica Dirigida al Gobierno de la Ciudad de México](#) (2018) (both documents are in Spanish).

⁵ The White House Office of Press Secretary, "[Remarks by the President at the White House Tribal Nations Conference](#)" (Dec. 16, 2010); United States State Department, "[Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples: Initiatives to Promote the Government-to-Government Relationship and Improve the Lives of Indigenous Peoples](#)," (Jan. 12, 2011).

⁶ WALTER R. ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 252–53 (2013).

⁷ John E. Echohawk, [Understanding Tribal Sovereignty: The Native American Rights Fund](#), 55 EXPEDITION MAG. 18, 23 (2013).

⁸ S. James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), [The Situation of Indigenous Peoples in the United States of America](#), U.N. Doc. A/HRC/21/47/Add. 1 (Aug. 30, 2012).

Implement the United Nations Declaration on the Rights of Indigenous Peoples in the United States in 2018 (“NARF-CU Project” or the “Project”).⁹ Recognizing the potential of the Declaration to advance Indigenous Peoples’ rights, the Project supports implementation efforts through both education and advocacy. In 2019, the Project held a conference convening tribal leaders, lawyers, scholars, and students to discuss Indian Country needs and how the Declaration could be utilized to help address them. Findings from the conference were published in the Project’s first Report, “[A Call to Action for Inspired Advocacy in Indian Country: Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States.](#)” Readers who seek a general introduction to the Declaration are encouraged to read the Report.

The Project now turns its attention more specifically to Indigenous Peoples’ own laws. Many tribal leaders have asked for information about how they can support efforts to ensure that the United States honors the promises of the Declaration. Others would like to consider using the Declaration internally in tribal law and governance. In many ways these pursuits intersect, in which tribal, national, and international law relate to and influence each other. Adoption of the Declaration is a key element of the current moment in human rights developments, when:

[N]ation-states are beginning to accept human rights norms derived from international and indigenous sources in their own judicial decisions, constitutions, and other activities. And indigenous peoples themselves are employing human rights discourse as a tool for internal reflection and reform. These phenomena are inextricably intertwined in substance and form, ultimately reinforcing and reifying a truly indigenous body of human rights law.¹⁰

To respond to both questions – how to reinforce national implementation of the Declaration and how to use the Declaration in tribal governance – we have developed this “Tribal Implementation Toolkit,” produced in collaboration with UCLA School of Law’s Tribal Legal Development Clinic. The Toolkit provides background information on the Declaration and examples of lawmaking inspired by it. Our hope is that tribes, their leaders, members, and lawyers will use these tools to learn about the Declaration and consider its application in tribal legal settings as an expression of Indigenous Peoples’ inherent rights.

⁹ [Native American Rights Fund – University of Colorado, Joint Project to Implement the United Nations Declaration on the Rights of Indigenous Peoples in the United States.](#)

¹⁰ Kristen A. Carpenter and Angela R. Riley, [Indigenous Peoples and the Jurisgenerative Moment in Human Rights](#), 102 CALIF. L. REV. 173, 176-77 (2014).

THE LEGAL STATUS OF THE DECLARATION

In the United Nations (UN) system, Declarations are official texts adopted by resolution of the General Assembly, which is comprised of all Member-States of the UN. In 2007, the Declaration on the Rights of Indigenous Peoples was adopted by vote of 143 States in favor, 11 abstaining, and 4 against. The four “no” votes were made by States that subsequently reversed course (including the United States). Of the countries that abstained, two have now endorsed the Declaration. There are no outstanding votes against the Declaration.

In 2014, all 193 member states of the UN expressed support for the Declaration and committed to its implementation in the Outcome Document of the World Conference on Indigenous Peoples. In all of these ways, the Declaration represents the world community’s recognition of minimum standards for the just treatment of Indigenous Peoples.

By the terms of the UN Charter, General Assembly resolutions are generally “recommendatory” rather than “binding” in nature. Yet, sometimes, Declarations are so widely accepted that they come to embody “customary international law” or “general principles” of international law. The Declaration on the Rights of Indigenous Peoples is beginning to move in this direction, and some of its articles are expressive of current customary international law. Moreover, the Declaration operates as a source of interpretation of States’ obligations to Indigenous Peoples under international treaties, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

Any aspect of international law becomes binding in a particular jurisdiction if a legislative authority (e.g., the U.S. Congress, a state legislature, or a tribal council), adopts it as law. In the meantime, advocates may cite it as persuasive or secondary authority.

The Declaration and Indigenous Rights in the United States

The Declaration originated in the efforts of Indigenous Peoples who gathered for decades to draft an instrument that would reflect their values and lifeways.¹¹ They negotiated over many years with representatives of national governments, who ultimately voted overwhelmingly for the General Assembly's adoption of the Declaration in 2007. As adopted, the Declaration sets forth a comprehensive and holistic recognition of the rights and responsibilities that can help to ensure Indigenous Peoples survive and thrive in relationship with others going forward.

As an initial matter, Article 1 recognizes: "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."

Fundamental among the Declaration's provisions is its recognition of Indigenous Peoples' rights of "self-determination" and to "live ... as distinct peoples" who are "free and equal to other peoples," articulated in the following articles:

- Art. 2: "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination."
- Art. 3: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
- Art. 4: "Indigenous peoples... have the right to autonomy or self-government in matters relating to their internal and local affairs."
- Art. 5: "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."
- Art 7(2): "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples."
- Art. 34: "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and ... juridical systems or customs, in accordance with international human rights standards."

¹¹ The Declaration reflects many points of compromise, by Indigenous Peoples and States alike. For viewpoints on this process, see JAMES (SA'KE') YOUNGBLOOD HENDERSON, *INDIGENOUS DIPLOMACY AND THE RIGHTS OF PEOPLES: ACHIEVING UN RECOGNITION* (2008); *MAKING THE DECLARATION WORK: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (Claire Charters and Rudolfo Stavenhagen eds., 2009); *REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (Stephen Allen and Alexandra Xanthaki eds., 2011); and CHARMAINE WHITE FACE AND ZUMILA WOBAGA, *INDIGENOUS NATIONS' RIGHTS IN THE BALANCE: AN ANALYSIS OF THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (2013).

In the United States, Indigenous Peoples have long exercised these rights and responsibilities, including through their own tribal lawmaking institutions.¹² Yet they face serious challenges from those who wish to diminish tribal self-determination on grounds that it is inapposite to the demands of contemporary society.¹³ The Declaration offers a powerful counter-point to these views and an affirmation of the inherent rights of Indigenous Peoples to both their laws and lawmaking institutions, and their basic right to survive as distinct peoples.

Turning to other substantive provisions, Articles 1, 13, and 35 acknowledge that Indigenous Peoples' societies are individual and collective in nature, comprised of both rights and responsibilities, and shaped by intergenerational relationships among humans, and with the natural world.

Of significant relevance in the United States, where many tribal governments and Native Nations wish to improve the federal-tribal consultation process, Article 19 sets forth a standard of "free, prior, and informed consent" (FPIC) that governs cooperation and consultation regarding legislative and administrative measures that may affect Indigenous Peoples. Other provisions for FPIC, in specific contexts including the taking of sacred places, development projects, and hazard waste storage, appear throughout the Declaration.

In the realm of culture, Articles 11, 12, 13, 14, 15, and 31 recognize that Indigenous Peoples have a right to their distinctive cultures generally, as well as to their languages, religions, traditional knowledge, and repatriation of human remains and ceremonial objects. To the extent that U.S. policy historically sought to eradicate Indigenous Peoples' cultures, and currently offers few remedial or ongoing protections in the realm of cultural rights, the Declaration can provide important standards.

Articles 25, 26, 27, 28, and 29 recognize Indigenous Peoples' existing rights to land and natural resources, while also requiring restitution for certain past takings. Article 37 provides for the recognition of rights in treaties and other agreements entered into by States and Indigenous Peoples.

The Declaration also helps to contextualize universal human rights standards in the Indigenous context. For example, while the Declaration, like other human rights instruments, recognizes rights to religion and culture, Article 25 states more specifically: "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands."

Encouraging Implementation by the United States and Other Governments

The responsibility to implement the Declaration falls ultimately on the United Nations and member States such as the United States. Article 42 proves:

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, ***and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration*** (emphasis added).

¹² MATTHEW L.M. FLETCHER, AMERICAN INDIAN TRIBAL LAW, 2ND ED. (2020).

¹³ See, e.g., *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) (holding tribes lack adjudicative and legislative jurisdiction over nonmember conduct on a federally-granted right-of-way); *Nevada v. Hicks*, 533 U.S. 353 (2001) (holding tribes lack adjudicative and legislative jurisdiction over state officers' on-reservation conduct because the conduct is not essential to tribal self-government or internal relations, and because states retain inherent jurisdiction on reservations with regard to off-reservation violations of state law).

As noted above, the United States has already expressed support for the Declaration, becoming one of the many States around the world to embrace its global standards for the treatment of Indigenous Peoples. However, the United States has not yet passed implementing legislation to bring federal law generally into compliance with the Declaration.¹⁴ Thus, implementation by the federal government is still quite nascent. To date, one federal court has cited the Declaration in a decision related to Indigenous land rights,¹⁵ and some federal agencies have adopted it in guidance regarding consultation and sacred places.¹⁶ At the state level, the California Legislature has also expressed support for the Declaration.¹⁷

Tribal governments and Native Nations have tremendous potential to lead the implementation movement. The important role of tribes was highlighted in a 2017 Resolution of the National Congress of American Indians (NCAI), which, per the Resolution:

Affirms and recognizes the critical role held by Indigenous constitutional and customary tribal governments, as the direct and accountable representatives to the constituencies of Indigenous Peoples and tribes of the United States, in the implementation of the [Declaration] by the United Nations, as well as within the federal and state governments of the United States of America.¹⁸

In 2020, NCAI reaffirmed its endorsement of the Declaration and made a call to action requesting:

[T]he President of the United States [to] issue and Executive Order creating a Commission on Implementation of the Declaration on the Rights of Indigenous Peoples . . . [and to] appoint an Ambassador on Indigenous Affairs . . .

and, of specific relevance to tribal implementation of the Declaration, NCAI stated:

[NCAI] . . . encourages tribal nations and other Indigenous Peoples to consider reviewing the Declaration with a view to identifying possible localized versions of those Articles of the Declaration that may be appropriate to utilize in tribal law depending on the specific circumstances and needs of individual tribal nations.¹⁹

Tribal governments and Native Nations may wish to pass resolutions endorsing the Declaration and calling on federal, state, and local governments to undertake further measures to implement it. In Chapter One, this Toolkit references several tribes that have already passed such resolutions and provides a sample resolution in Appendix IV.

¹⁴ In announcing support for the Declaration, the U.S. State Department opined that U.S. law already largely meets the standards of the Declaration. [Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples](#), U.S. DEP'T OF STATE (Jan. 12, 2011).

¹⁵ *Pueblo of Jemez v United States*, 350 F.Supp. 3d 1052, 1094 n.15 (2018) (citing the Declaration in support of the point that “both international law and other common-law countries’ law recognize aboriginal title”).

¹⁶ Advisory Council on Historic Preservation, [“United Nations Declaration on the Rights of Indigenous Peoples”](#).

¹⁷ California Assembly Joint Resolution, [Indigenous Peoples: Declaration of Rights](#), No. 42 (Aug. 14, 2014).

¹⁸ National Congress of American Indians, [“Acknowledging the 10th Anniversary of the Passage of the UN Declaration on the Rights of Indigenous Peoples”](#), Resolution MKE-17-049 (2017). The full text of the NCAI resolution is set forth in Appendix I.

¹⁹ National Congress of American Indians, [“Calling on the United States and Tribal Nations to Take Action to Support Implementation of the UN Declaration on the Rights of Indigenous Peoples”](#), Resolution PDX- 20-056 (2020). The full text of the NCAI resolution is set forth in Appendix II.

More broadly, referencing the Declaration in tribal lawmaking institutions may be instructive and supportive to the agencies, courts, and legislatures of federal, state, local, *and* tribal governments as they work to grasp the significance and applicability of this instrument. This Toolkit provides numerous examples of tribal codes, agreements, and reports referencing the Declaration.

TOOLKIT TERMINOLOGY

Implementation: A process of putting something into effect. In this context, implementation would include any and all measures that make the Declaration and its many provisions practically effective in improving the legal, political, cultural, economic, and social realities of Indigenous Peoples.

Endorsement: A formal and public statement of approval or support for someone or something. In this context, a tribal government may decide to issue a resolution endorsing the Declaration.

Adoption: The act of accepting a document and giving it legal effect, as in adopting a constitution. In this context, a tribal council may decide to adopt the Declaration as tribal law, making it legally enforceable in tribal institutions. Adoption may be “wholesale”, meaning it makes the entire Declaration binding as a matter of tribal law, or “partial”, meaning it selects among articles of the Declaration that will become binding.

Law Reform and Development within Tribal Governments and Native Nations

In addition to encouraging federal, state, and local governments to implement the Declaration, tribal governments and Native Nations may also wish to use the Declaration internally in their own lawmaking.

For many years, tribal governments and Native Nations in the United States were encouraged to use federal or state law as models for their own constitutions and codes. In some cases, these practices resulted in the adoption of tribal laws and institutions that conflicted with tribal values or lacked legitimacy among tribal members.²⁰

Today, while Indigenous Peoples seek to reevaluate existing laws, or develop new ones, the Declaration offers an alternative source of guidance. The Declaration can help to emphasize Indigenous Peoples’ own self-determination versus external aspirations or standards. Indeed, a number of tribes have already pursued tribal lawmaking along these lines. Chapter Two describes and discusses examples of tribal wholesale adoption of the Declaration and Appendix V provides sample legislation. Chapters Three through Eleven describe and discuss examples of partial Declaration adoption in the context of particular subject matters.

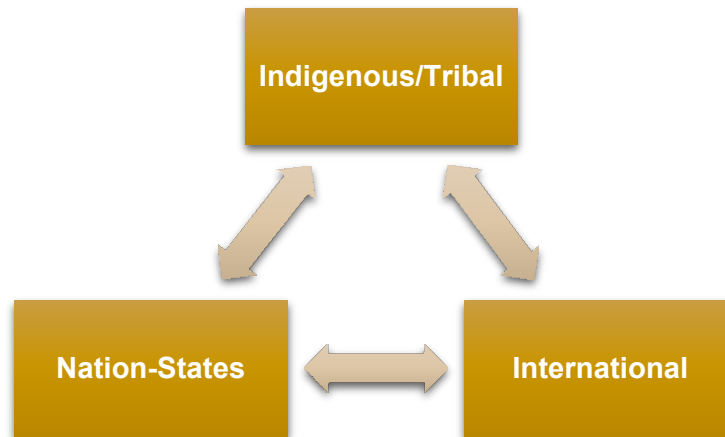
A Jurisgenerative Moment

As Indigenous Peoples in the United States consider the potential for using the Declaration, we see this as a “jurisgenerative” or “law creating” moment.²¹ Drawing from their own laws, customs, traditions, and human rights as understood in Indigenous Peoples’ contexts, tribal governments and Native Nations and others have the potential to usher in legal reform that honors Indigenous rights and relationships and addresses contemporary challenges. The interaction between Indigenous, State, and international laws – particularly to the extent that

²⁰ Stephen Cornell and Joseph P. Kalt, “Two Approaches to the Development of Native Nations: One Works, the Other Doesn’t,” in *REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT* (ED. MIRIAM JORGENSEN 2007).

²¹ Kristen A. Carpenter and Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CALIF. L. REV. 173 (2014).

they inform one another – is an illustration of what scholars call “multiple site engagement.”²²



An important jurisgenerative example comes from the Navajo Nation Human Rights Commission, which often cites the Declaration in its work. Referencing Article 3 of the Declaration regarding Indigenous Peoples’ right to self-determination, the Commission has stated: “The most protected and sacred right of all peoples is the right to govern their affairs, make decisions without being coerced by other governments. This is an inherent right of peoples and for the Navajo people it has existed since time immemorial.” Moreover, “Navajo written law must recognize the Navajo people’s right to self-determination comes from the Holy People.”²³

In another example, the Muscogee (Creek) Nation has taken measures to embrace the Declaration through translation of the document into the Mvskoke language and adoption into tribal law. This process has allowed for the development of Mvskoke meanings of key terms in the Declaration and a truly Mvskoke Declaration on the Rights of Indigenous Peoples, focusing on tribal existence and traditional ceremonies, culture, and lifeways.²⁴

Inspired by these and other examples, this Toolkit focuses on various models of law reform available to tribal governments and Native Nations, which can include: (1) tribal constitutions, codes, and resolutions; (2) executive orders and administrative law; (3) case law; and (4) customary law. Additionally, the Toolkit cites examples, as in the Navajo Nation Human Rights Commission, of tribal institutions that have been created expressly to focus on human rights in tribal-specific contexts. The Toolkit includes both examples of tribal lawmaking that expressly reference the Declaration, and others that reflect the spirit of the Declaration’s norms and values.

Whether by endorsing, interpreting, translating, or applying the Declaration in their own legal systems, Indigenous Peoples will continue to advance the true potential of this instrument to foster the survival and flourishing of Indigenous Peoples’ lifeways here in the United States and around the world.

Finally, as noted, this Toolkit primarily considers how tribes can support and implement the Declaration

²² Judith Resnik, *Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry*, 115 YALE L. J. 1564, 1670 (2006).

²³ Navajo Nation Human Rights Commission, “[Self Determination](#).”

²⁴ [Mvskoke Este Catvlke Vhakov Empvtakv Enyekcetv Cokv](#) (Declaration on the Rights of Indigenous Peoples). For translations of the Declaration, including into various indigenous languages, see [UN DESA](#).

through tribal lawmaking. Future publications of the NARF-CU Project will address: (1) strategies for using the Declaration in federal litigation, regulatory, and legislative matters; (2) accessing international and regional bodies such as the United Nations and the Organization of American States; and (3) other questions regarding Indigenous Peoples and the Declaration.

Ch. 1 Tribal Resolutions Endorsing the Declaration

Some tribes may wish to express their support for the Declaration by passing a tribal resolution endorsing the Declaration and calling on federal, state, and local governments to implement it. (See Sample in Appendix IV). Endorsement can bring attention to the Declaration and encourage relevant governments to take meaningful actions to reform their own laws and policies accordingly, as well as influence internal tribal governance.

Tribal Resolutions Endorsing the Declaration

Some tribes have already endorsed the Declaration and its principles.

For example, the Seminole Nation of Oklahoma in 2010,²⁵ and the Pit River Tribe of California in 2012,²⁶ voted to “recognize and affirm” the Declaration. The resolution of the Pit River Tribe provides:

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council of the Pit River Tribe of California hereby recognizes and affirms the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations Human [R]ights Council [sic] on September 13, 2007 as a minimum expression of the Indigenous rights of the Pit River Tribe of California.

The Cherokee Nation in 2014 adopted a resolution “urging the United Nations to establish a mechanism to encourage nations to implement [the Declaration], to promote measures to address violence against Indigenous women and children, and to create a new status for indigenous governments that recognizes them as unique nations, societies, and cultures.”²⁷ The Gila River Indian Community in 2008 adopted a resolution recognizing and affirming the Declaration, and authorizing their Governor “to take all steps necessary to carry out the intent” of the Resolution.²⁸

The Muscogee (Creek) Nation first endorsed the Declaration in 2013. Then, in 2016, the Nation translated the Declaration into the Mvskoke language and subsequently voted to adopt the Muscogee Declaration on the Rights of Indigenous Peoples as tribal law, as described in the next chapter.

²⁵ Seminole Nation of Oklahoma, “[A Tribal Resolution of the Seminole Nation of Oklahoma Affirming the United Nations Declaration on the Rights of Indigenous Peoples](#),” TR 2010-26 (March 6, 2010).

²⁶ Pit River Tribe of California, “[A Tribal Resolution of the Pit River Tribe of California Affirming the United Nations Declaration on the Rights of Indigenous Peoples](#),” Resolution No. 12-03-05 (May 29, 2012).

²⁷ Cherokee Nation, “A Resolution Authorizing the Cherokee Nation to Encourage the United Nations to Implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),” [Resolution No. 23-14](#) (Mar. 10, 2014).

²⁸ The Gila River Indian Community, “A Resolution Affirming the United Nations Declaration on the Rights of Indigenous Peoples,” GR-126-08 (May 2, 2008).

Endorsing the Declaration – Good Practice

The Cherokee Nation endorsed the Declaration in 2014. In doing so, the Nation focused attention on the need for the United Nations to further encourage nation states to implement the Declaration, with a particular focus on addressing violence against Native women and children, as well as to create a space within the United Nations to accommodate Indigenous governments as sovereigns.

Committee: <u>Rules Committee</u> Date: <u>02-12-14</u> Committee Date: <u>02-27-14</u>	Author: <u>Chairman Barack-Thompson</u> Sponsors: <u>Y. Vazquez, J. Coates, T. Oliver, Jordan, D. Walkingstick, J. Boyd, J. Fishburne, E. Harris, J. Fullbright, B. Garcia, D. Thomson, C. Snell, J. Taylor, D. Lay, C. Cowan White, L. Keener, J. D. Baker</u>
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RESOLUTION NO. 23-14

COUNCIL OF THE CHEROKEE NATION

A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO ENCOURAGE THE UNITED NATIONS TO IMPLEMENT THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP).

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

WHEREAS, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a significant development in international human rights law that recognizes the permanent right of indigenous peoples to exist as peoples, nations, cultures, and societies;

WHEREAS, the UNDRIP was adopted by the UN General Assembly in 2007, and has been endorsed by all countries;

WHEREAS, Native nations are already using the UNDRIP as another way to protect their lands and resources, as it forms a framework for how federal laws, regulations, policies, and practices should affect the workings of Native governments;

WHEREAS, the UNDRIP recognizes the right of self-determination for indigenous peoples;


WHEREAS, the Cherokee Nation, among many other tribal governments, exercises the right of self-determination in our day to day self-governance; and,

WHEREAS, indigenous peoples are entitled to a regular and permanent status in the United Nations that allows full and effective participation in all relevant UN activities;

BE IT RESOLVED BY THE CHEROKEE NATION, that the Tribal Council hereby authorizes the Cherokee Nation resolves to encourage the United Nations to establish a mechanism to monitor and encourage nations to implement the UNDRIP; to promote measures to address violence against our Native women and children; and to create a new status for indigenous governments that adequately recognizes our status as unique nations, societies, and cultures.

CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 10th day of March, 2014, having 17 members present, constituting a quorum, by the vote of 17 yea; 0 nay; 0 abstaining.


Tina Glory Jordan, Speaker
Council of the Cherokee Nation

Ch. 2 Wholesale Adoption of the Declaration

Some tribes may wish to adopt the Declaration “wholesale,” and amend tribal law to recognize and incorporate the entirety of the instrument, including its preamble and forty-six operative provisions, or to adopt a localized version of the Declaration, specific to the unique circumstances and needs of the individual tribe. (See Sample in Appendix V.)²⁹ At least one tribe, the Muscogee (Creek) Nation, has adopted its own version of the Declaration. This chapter provides guidance and models on wholesale adoption of the Declaration, and subsequent chapters consider tribal lawmaking related to implementation of the Declaration’s provisions in the context of particular subject matters, such as religious freedom and children’s rights.

Efforts to Implement the Declaration in the United States and other Countries

The United States has not yet incorporated the Declaration into U.S. law in any comprehensive way. However, the implementation movement is underway, including, for example, several federal administrative agencies’ adoption of the Declaration as a matter of policy.³⁰ Outside the U.S., at least in some countries, implementation has been more robust. In 2019, the Legislative Assembly of British Columbia, a province of Canada, unanimously passed the Declaration on the Rights of Indigenous Peoples Act.³¹ The Act requires the government, among other things, to take all necessary measures in consultation and cooperation with Indigenous Peoples to ensure provincial laws are consistent with the Declaration, through measures including an action plan and an annual report on progress. The Act also specifies that nothing in its terms should diminish existing rights of Indigenous Peoples under the Canadian constitution or other laws. The British Columbia example may be helpful for advocates in the U.S. to consider.

Translating the Declaration into Indigenous Languages and Cultural Contexts

The terms of the Declaration will likely have different meaning and significance to different tribal governments and Native Nations, depending on their historical, cultural, and linguistic contexts. Analysis and adoption of the Declaration into tribal law must consider how the tribe or Native Nation understands the concepts in the Declaration. One approach is to translate the Declaration into the relevant Indigenous language or to have conversations about its resonance with tribal law, custom, and tradition. This work will likely require the expertise of elders and linguists, as well as a commitment to community debate about how the Declaration relates to Indigenous norms, values, and worldviews. It further demonstrates the relevance of Indigenous languages and cultures to human rights.³²

²⁹ Before adopting the Declaration, in whole or in part, as tribal law, a thorough analysis should be undertaken by the tribe’s governing authorities, with the assistance of legal counsel and other experts such as elders, as to the effect such adoption would have on the tribe’s existing laws and rights, customary practices, and relations with other tribes.

³⁰ “[Advisory Council on Historic Preservation Endorses the United Nations Declaration on the Rights of Indigenous Peoples](#)” ACHP Press Release (March 1, 2013).

³¹ Bill 41, [Declaration on the Rights of Indigenous Peoples Act](#), 4th Session, 41st Parliament, British Columbia, 2019.

³² United Nations Dep’t Econ. and Soc. Aff., *In Languages*, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples/previous-updates.html> (last visited Nov. 6, 2020).

Implementing the Declaration Wholesale in Tribal Law

As an overriding objective, this Toolkit seeks to honor and encourage tribes' own interpretations of the Declaration and their assessments of its potential application in tribal law. As a matter of self-determination and tribal sovereignty, tribes may consider a range of options with regard to adoption, including any or all the following:

- Prepare a report to assess whether tribal laws are consistent with the Declaration and whether the tribe is following any tribally- developed action plan to achieve the Declaration's objectives.
- Translate the Declaration into the Indigenous language(s).
- Develop an action plan to achieve the objectives of the Declaration.
- Take all measures necessary to ensure tribal laws are consistent with the Declaration.
- Adopt the Declaration as tribal law.

As described below, the **Muscogee (Creek) Nation** first endorsed the Declaration, then translated it into the Mvskoke language and adopted the Muscogee Declaration as tribal law.

Wholesale Adoption of the Declaration – Good Practice

The Muscogee (Creek) Nation has a long history in the international human rights movement, with its respected leader Phillip Deere representing the Tribe at the United Nations in 1978, where he spoke about treaty rights and traditional Indigenous values. Today the Muscogee (Creek) Nation is on the forefront of implementing the Declaration in the U.S. Those at the Nation involved in this process have expressed interest in the Declaration's potential for preserving the tribal existence and its protections for cultural ways.¹

In 2013, the Muscogee (Creek) Nation first *endorsed* the Declaration as follows:

WHEREAS, the Nation strongly feels that if we as Native people can stand together on issues such as these, we represent a strong voice which cannot only be heard, but which can be a powerful influence for change to help end some of these injustices.

NOW THEREFORE BE IT RESOLVED THAT, the Muscogee (Creek) Nation hereby supports the "United Nations Declaration on the Rights of Indigenous Peoples."²

In 2016, fluent speakers, judges, and ceremonial leaders decided to *translate* the Declaration into the Mvskoke language. The Nation ultimately *adopted* the Muscogee Declaration on the Rights of Indigenous Peoples:

WHEREAS, the translation of the Declaration on the Rights of Indigenous Peoples into Mvskoke language is an exercise of the Nation's sovereign rights with the ultimate goal of removing the legal and cultural obstacles that prevent the Muscogee people from continuing their traditional and ceremonial life.

NOW THEREFORE BE IT RESOLVED THAT, the Muscogee (Creek) Nation hereby adopts the attached Declaration on the Rights of Indigenous Peoples.³

¹. Gregory H. Bigler, *Traditional Justice and Protection of Our Society: A Jurisgenerative Tail*, 43 AM. INDIAN L. REV. 1 (2018).

². MCN Tribal Resolution 13-013: In Support of the United Nations Declaration on the Rights of Indigenous Peoples (Jan. 26, 2013).

³. MCN Tribal Resolution 16-149: Adopting A Declaration on the Rights of Indigenous Peoples and Directing Said Declaration into Mvskoke Language (Sep. 24, 2016).

IMPLEMENTING SPECIFIC SUBJECT MATTERS

Ch. 3 Rights to Culture and Language

As an alternative to general endorsement or wholesale adoption, tribes may wish to consider subject matter specific implementation of the Declaration within tribal law. Several tribes, including the Ho-Chunk Nation, have done so with respect to the Declaration's provisions on culture and language. Once enacted, these tribal legal provisions may be cited both in tribal legal institutions and communities, as well as in advocacy with local, state, and federal governments.³³

Cultural and Language Rights in the Declaration

The Declaration expressly recognizes Indigenous Peoples' rights to practice, access, and revitalize culture, and explicates State obligations to redress past harms. Articles 8, 11, 12, 13, 14, 15, 16, 19, 24, 27, 28, and 31 all recognize various cultural and language rights.

For example, Article 11 affirms:

Indigenous Peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Similarly, the Declaration affirmatively recognizes Indigenous Peoples' rights to language in Article 13:

Indigenous Peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

Article 31 states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

³³ See e.g. Native American Rights Fund – University of Colorado Joint Project, [Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country](#) 54 (2019) (“Advocates can also work with tribal governments and Native Nations regarding protection of traditional knowledge, cultural expressions, and genetic resources and can support the work of the National Congress of American Indians and tribal governments and Native Nations in participating in both federal and international processes regarding the recognition of indigenous peoples’ cultural property rights.”).

Cultural and Language Rights in the United States

The laws of the United States offer few protections for “cultural rights.” This is particularly troubling when for hundreds of years, federal and state laws sanctioned cultural assimilation and destruction, including the looting of Indigenous graves, eradication of Indigenous languages, and prohibition of Indigenous ceremonies.

Recent legal reforms in the areas of repatriation and language rights, for example, have begun to remedy past harms. However, federal and state legal systems are rooted in a settler-colonial framework that has historically neglected Indigenous cosmologies and worldviews on what cultural property and rights mean to their respective communities. The protections that are available under this framework tend to be limited in scope, designed for non-Indigenous resource protection, and/or have slow and ineffective enforcement measures. It remains critical that the United States bolster Indigenous cultural rights. Tribes have an important role to play in continuing to press the United States to live up to its obligations.

Implementing the Declaration’s Cultural and Language Articles in Tribal Law

Tribal laws often reflect and embody tribal values regarding cultural and language rights, including both the preservation and revitalization of those rights. They also provide infrastructure for cultural resource protection and access. The Declaration can be used to bolster these protections, as in the following examples:

- Affirm the importance of Indigenous languages, and set goals for language use, revitalization, and transmission.
 - The **Shawnee Tribe** has proclaimed the Decade of Shawnee Language, “where we will deploy a language plan to all of the Shawnee Communities to create fluent language speakers from the youngest of our people.”³⁴ This is an opportunity for tribal governments and Native Nations to emphasize Articles 11 and 12 in advocacy related to the use, transmission, and revitalization of Indigenous Peoples’ languages in the United States.³⁵ The Shawnee initiative complements the United Nations General Assembly’s International Decade of Indigenous Languages 2022-2032.
- Affirm tribal cultural values as they inform resource protection.
 - The **Pascua Yaqui Tribe of Arizona** states that one of its purposes is “to preserve and promote the spiritual, cultural and social values of the Yaqui people.” The Tribe’s Constitution then provides the following powers of enforcement concerning cultural rights:

To protect all historic, religious, sacred, archeological and other sites of scenic or scientific or cultural interest on the Pascua Yaqui Reservation and on land where the title or an interest therein is owned by or held in trust for the tribe. To regulate ceremonies and other Yaqui customs and traditional activities in order to ensure the preservation of Yaqui cultural values, and to encourage and foster the arts, crafts, traditions, language and culture of the tribe.³⁶

³⁴ Levi Rickert, [“Shawnee Chief Ben Barnes: ‘We \[\] Risk of Losing the Voices of Our Grandparents Forever,’”](#) NATIVE NEWS ONLINE (Jan. 06, 2020).

³⁵ Kristen A. Carpenter and Alexey Tsykarev, [Indigenous Language as a Human Right](#), 24 UCLA J. INT’L L. FOR. AFF. 49 (2020).

³⁶ Constitution of the Pascua Yaqui Tribe, Amended (2015).

- The **Tohono O’odham Nation** defines “cultural affiliation” under tribal law, broadening the Native American Graves Protection and Repatriation Act (NAGPRA)³⁷ definition of the term to include Tohono O’odham Nation historical context, “including the relationship between the Tohono O’odham and the Paleo Indian, Archaic, and Hohokam cultural groups.”³⁸
 - The **Oglala Sioux Tribe of South Dakota** has promulgated provisions in its Law and Order Code that make it unlawful for debtors to collect any “items pertaining to religious and cultural significance” from Tribal Members.³⁹
- Affirm cultural values to include contemporary cultural and language revitalization and promotion, including the cultivation of arts and crafts.
 - The **San Carlos [Apache Tribe of Arizona]** Council has the power “[t]o cultivate Indian arts, crafts and cultures.”⁴⁰
 - The **Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians** supplement their Constitutional value statements on the preservation and promotion of cultural and economic welfare. The Business Licensing Chapter directly addresses arts and crafts as economic welfare to be protected and promoted by the Cultural Department. The Chapter empowers Tribal Members to utilize the Cultural Department to obtain a Certificate of Authenticity Stamp that they may attach to their arts or crafts products.⁴¹
- Promote equitable access to cultural resources, including for diverse cultural groups.
 - The **Rincon Band of Luiseño Mission Indians** General Welfare Assistance Ordinance provides assistance and services related to general welfare, and specifically includes “cultural” and “spiritual” expenses. This includes an assistance program that encourages members to participate in “cultural, social, religious, community and educational activities.”⁴²
- Establish cultural management bureaucracies to facilitate and advocate for cultural resource protection that incorporates tribal values, as well as facilitate protection under federal statutes like the Indian Arts and Crafts Act,⁴³ the Archaeological Resources Protection Act,⁴⁴ and NAGPRA.
 - The **Fernandeño Tataviam Band of Mission Indians** established a Tribal Historical Cultural and Preservation Department (THCPD).⁴⁵ The Department is comprised of Tribal Cultural Resources Jurisdiction, Tribal Consultation, and Native American Monitoring. The THCPD is utilized in place of a Tribal Historic Preservation Officer (THPO) but structured so that it can work directly with THPOs, and within the guidelines of state laws.⁴⁶

³⁷ The Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 (1990).

³⁸ Tohono O’odham Nation, Title 8: Culture, Chapter 2 -Repatriation (2009) section 1201.

³⁹ Oglala Sioux Tribe of South Dakota, Law and Order Code, Section VII (1996).

⁴⁰ Amended Constitution and Bylaws of the San Carlos Apache Tribe of Arizona (1954).

⁴¹ Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Tribal Code: Title 6 – Corporations, § 6-4-17(b).

⁴² Rincon Band of Luiseño Mission Indians, Rincon Tribal Member General Welfare Assistance Program Ordinance Rincon Tribal Code § 17.500.

⁴³ Indian Arts and Crafts Act, 18 U.S.C. § 1159 and 25 U.S.C § 305(e) (1990).

⁴⁴ Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa – 470mm (1988).

⁴⁵ Fernandeño Tataviam Band of Mission Indians, Tribal Historical Cultural and Preservation Department, <https://www.tataviam-nsn.us/tribal-government/departments/tribal-historical-cultural-preservation-department/>.

⁴⁶ See Consultation Guidelines for Working with THPOs under the California Environmental Quality Act (CEQA), available at <https://www.tataviam-nsn.us/tribal-government/departments/tribal-historical-cultural-preservation-department/ab-52-tribal-consultation/>

- Criminalize cultural rights violations.
 - The **Cheyenne River Sioux Tribe of South Dakota** addresses violations against cultural rights through a Cultural Resources Protection Act. The Act addresses both the protection of cultural resources and penalties for certain violations.⁴⁷
- Support Indigenous law and institutions to engage in repatriation claims.
 - The **Yaqui People of Sonora and Arizona** recently adopted resolutions creating a cross-border “Maaso Kova Committee,” consistent with traditional law and custom, and pursued the international repatriation of a sacred object from the Swedish National Museums of World Culture, expressly invoking Articles 11, 12, and 31 of the Declaration.⁴⁸

In these ways, tribes are leveraging tribal law to creatively maintain, protect, repatriate, access, and develop Indigenous culture and language for future generations. Some tribal measures expressly invoke the Declaration, while many do not. Some measures concern internal tribal governance, while others are intended to interact with external local, state, federal, and international governments. All of them, however, approach cultural rights through a human rights and Indigenous rights lens.

⁴⁷ Cheyenne River Sioux Tribe of South Dakota, Ordinance No. 57, Cultural Resources Protection Act (January 30, 1992).

⁴⁸ Expert Mechanism on the Rights of Indigenous Peoples, Technical Advisory Note – Repatriation request for the Yaqui Maaso Kova. June 12, 2020, <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session12/MaasoKova.pdf>

Rights to Culture and Language – Good Practice

The Ho-Chunk Nation has specifically addressed the importance of culture and language to the Ho-Chunk people in its tribal code. Chapter I of the Ho-Chunk Nation Language and Culture Code states that:

The Ho-Chunk Nation formally adopts the following rights and measures as outlined [in] the United Nations Declaration on the Rights of Indigenous Peoples held On September 13, 2007:

The Ho-Chunk Nation asserts its basic language rights, which include:

- The right to be educated in our Native Tongue, the Ho-Chunk Language.
- The right to have the Ho-Chunk Language recognized in the Ho-Chunk Nation Constitution and laws of the Ho-Chunk Nation.
- The right to live free from discrimination on the grounds of the Ho-Chunk Language.

...

In keeping with Article 27 of the International Covenant on Civil and Political Rights of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations, the Ho-Chunk Nation declares all persons within our tribal jurisdiction belonging to non-Ho-Chunk racial, ethnic, political or linguistic minorities shall not be denied the right to enjoy their own culture, practice their own religion, or use their own language. We, the people of the Ho-Chunk Nation rely on the reciprocal adherence to this doctrine by the member state of the United States specifically as the doctrine pertains to the right of language use. ...

In addition, the Ho-Chunk Nation adopts the rights and liberties established within Article 13 and 14 of the United Nations Declaration on the Rights of Indigenous People, herein stated as:

The Ho-Chunk Nation has the right to revitalize, use develop and transmit to future generations our histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain our own names for communities, places and persons.

States shall take effective measures to ensure that this right is protected and also to ensure that the Ho-Chunk Nation can understand and be understood in political, legal, and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

The Ho-Chunk Nation has the right to establish and control their educational systems and institutions providing education in our own languages, in a manner appropriate to our cultural methods of teaching and learning.

Ho-Chunk Nation enrolled tribal members as individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

States shall, in conjunction with the Ho-Chunk Nation, take effective measures, in order for enrolled tribal members, particularly children, including those living outside their communities, to have access, when possible, to an education in our own culture and provided in our own Ho-Chunk language.

7 HCC § 4(3)-(4).

Ch. 4 Religious Freedoms

Indigenous Peoples in the U.S. have struggled to protect sacred places from desecration by governments and private parties, while also facing limitations on religious freedom more broadly. Although some tribes describe their spiritual practices as connected to culture, ceremonies, or place – without using the language of religion per se – the Declaration’s religious freedoms provisions may nevertheless be useful to them.⁴⁹ The Declaration recognizes the spiritual significance of land and the importance of ritual practices to religious freedoms and sets forth principles tribes may draw from to set internal policy, as well as to advocate for legislative, administrative, and judicial protections.⁵⁰

Religious Freedoms in the Declaration

The right to religious freedom is acknowledged directly in Articles 11 and 12, and through ties to culture, spiritual traditions, and land in Articles 20, 25, 31, 32, and 34. For example:

Article 12 Provides:

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 25 states:

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.

Within all of these provisions the Declaration characterizes the rights to religion as inherently linked to Indigenous Peoples’ practice of their culture and traditions and to the land.⁵¹ These articles affirm Indigenous Peoples’ rights to practice their ceremonies and religion; the right to their traditionally-owned territory that includes their religious and cultural places; the right to

⁴⁹ Gregory H. Bigler, *Traditional Justice and Protection of Our Society: A Jurisgenerative Tail*, 43 AM. INDIAN L. REV. 6 (2018).

⁵⁰ Native American Rights Fund – University of Colorado Joint Project, *Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country* 50 (2019) (describing the Declaration’s applicability sacred sites cases, with reference to provisions on religion, land, and FPIC).

⁵¹ Kristen A. Carpenter, “[Religious Freedoms, Sacred Sites and Human Rights in the United States](#),” in UNDRIP IMPLEMENTATION: COMPARATIVE APPROACHES, INDIGENOUS VOICES FROM CANZUS, SPECIAL REPORT (CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION 2020)

strengthen their spiritual relationship with the land; and the right to direct the institutional structures that sustain their spirituality and traditions.

Indigenous Religious Freedoms in the United States

Historically, the federal government criminalized Indigenous religious practices, such as the sun dance and potlach, in conjunction with federal policies designed to eradicate Indigenous cultures. Even as federal policy has evolved to express respect for the traditional religious practices of Indigenous Peoples, as in the American Indian Religious Freedom Act of 1978,⁵² substantive legal protections remain limited.⁵³ Courts struggle with the differences in worldview and ritual practice that distinguish Indigenous religions from mainstream world religions. In many Indigenous traditions, for example, spiritual beliefs are transmitted through oral traditions instead of texts, places of worship are found in natural landscapes as opposed to human-made buildings, and ceremonial calendars shift with the seasons or other natural occurrences, rather than affix in set dates.

The courts have not often protected Indigenous Peoples' religious freedom through either the First Amendment,⁵⁴ or the primary statutory mechanism, the Religious Freedom Restoration Act.⁵⁵ Congress has passed several statutes to address gaps in religious freedom protection for Indigenous Peoples, including the Bald and Golden Eagle Protection Act,⁵⁶ the National Historic Preservation Act,⁵⁷ the Native American Graves Protection and Repatriation Act,⁵⁸ and the American Indian Religious Freedom Act's peyote amendment,⁵⁹ each of which affords varying accommodations of Indigenous religious practices. Yet, like the First Amendment case law, these statutes are still inadequate to fully protect American Indian religious freedom in the United States.

⁵² American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996 (1994).

⁵³ *Lyng v. Northwest Cemetery Protective Assn.*, 485 U.S. 439 (1988) (permitting the construction of a federal road through lands sacred to the Yurok, Karuk, and Tolowa Indians, even if it would “virtually destroy the... Indians ability to practice their religion”).

⁵⁴ *Id.* at 458-77 (Brennan, J., dissenting) (“The Court holds that a federal land-use decision that promises to destroy an entire religion does not burden the practice of that faith in a manner recognized by the Free Exercise Clause. Having thus stripped respondents and all other Native Americans of any constitutional protection against perhaps the most serious threat to their age-old religious practices, and indeed to their entire way of life, the Court assures us that nothing in its decision “should be read to encourage governmental insensitivity to the religious needs of any citizen.”).

⁵⁵ Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, et. seq. (1993).

⁵⁶ Bald and Golden Eagle Protection Act of 1940, 16 U.S.C. § 668, et. seq (1972).

⁵⁷ National Historic Preservation Act, 54 U.S.C. § 300101, et. seq. (1966).

⁵⁸ 25 U.S.C. § 3001, et. seq. (1990).

⁵⁹ American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996 (1994).

Implementing the Declaration’s Religious Freedom Articles in Tribal Law

Tribes can use the Declaration to support their own conception of religion, religious practices, religious freedoms, culture, and spirituality. Tribes may wish to consider any or all of the following:

- Update tribal codes to protect religious and ceremonial practices, including rights of access to, and privacy at, religious places, as well as rights to govern information on religious practices that are deemed sacred and confidential.
 - The **Northern Arapaho Tribe** characterizes traditional ceremonies as “an integral part of the Tribe itself and essential to the survival and well-being of the Tribe and its members.” As such, “[t]he freedom to participate appropriately in traditional ceremonies, in accordance with ceremonial law, is guaranteed to the Tribe and its members in accordance with the law, tradition, and sovereignty of the Tribe itself.”⁶⁰
 - The **Ho Chunk Nation** “declares all persons within our tribal jurisdiction belonging to non-Ho-Chunk racial, ethnic, political or linguistic minorities shall not be denied the right to enjoy their own culture, practice their own religion, or use their own language.”⁶¹ (note that, as stated above, this provision cites the Declaration).
- Incorporate existing federal statutes that protect tribes’ religious freedoms into tribal codes, while supplementing the wording of these statutes with articles and rights outlined in the Declaration.
 - The **Mole Lake Band of the Lake Superior Chippewa Indians** expands upon the American Indian Religious Freedom Act (AIRFA) in its code by empowering religious leaders with decision-making authority and imposing affirmative duties on the Tribal Council for upholding those determinations.⁶²
- Establish cultural management bureaucracies to facilitate and advocate for religious protection that incorporates tribal values.
 - The **Yurok Tribe** code establishes a cultural resource program which includes a tribal archaeologist, a NAGPRA coordinator, and a tribal heritage preservation officer, who is “responsible for dealing with cultural resources, particularly those eligible for or on the National Register of Historic Places.”⁶³
- Identify items of religious significance (e.g., eagle feathers, Indigenous plants, and sacred animals).
 - The **Fond du Lac Band of Lake Superior Chippewa** Ma’iingan Protection Ordinance finds and declares that the Anishinabe (people) and Ma’iingan (wolves) “are brothers who [share] a special relationship since the Creation” and that the “survival and well-being of the Ma’iingan and Anishinaabe are inextricably bound.”⁶⁴

In these ways, tribes are building religious protections and values into tribal law in keeping with the Declaration’s call for Indigenous Peoples’ rights to religious beliefs and spiritual practices. Like cultural rights, they recognize

⁶⁰ Northern Arapaho Code, Title 13 Religious Freedom, § 101 (2012).

⁶¹ Ho-Chunk Nation, 7 HCC § 4 (2015).

⁶² Sokaogon Chippewa Community Codes, Ch. 7, Preservation of Tribal History and Significant Landmarks, § 7.4.2 (2011).

⁶³ Yurok Tribal Code, Ch. 14.10, Cultural resources Protection, § 14.10.080.

⁶⁴ Fond du Lac Band of Lake Superior Chippewa Ordinance #07/12: Ma’iingan Protection (Adopted by Resolution #1351/12, October 31, 2012).

the inextricable links between religious, cultural, land, and other interconnected rights and values.

Religious Freedoms – Good Practice

The Navajo Nation Human Rights Commission has cited both traditional law and the Declaration in identifying religious practices and sacred places comprising Navajo ways of life. These lawmaking examples are potentially important, both for internal purposes, and in external advocacy, where agencies and courts have failed to understand the legitimacy of Navajo ceremonial practices.

Diné Natural Law declares and teaches that:

The six sacred mountains, *Sisnajini*, *Tsoodzil*, *Dook'o'oosliid*, *Dibé Nitsaa*, *Dzil Na'oodilii*, *Dzil Ch'ool'i'i*, and all the attendant mountains must be respected, honored and protected for they, as leaders, are the foundation of the Navajo Nation; and

The rights and freedoms of the people to the use of the sacred elements of life as mentioned above and to the use of the land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné life way.

Diné Bi Beenahaz'áanii, 1 N.N.C. §§ 201-206.

In a 2012 [report](#), the Navajo Nation Human Rights Commission cited to the Declaration's Articles 11, 12, 25, and 34 and to *Diné Bi Beenahaz'áanii* regarding the protection of sacred places as an aspect of human rights and racial justice. The Commission noted:

These four articles of [the Declaration] support the principles of Diné Fundamental Law of the Navajo people. Together, they reinforce the inalienable rights of Indigenous peoples to continue to practice, revitalize, develop, teach, strengthen and maintain traditional ceremonies, prayers sacred sites and resources without the interference or fear of global dominant maneuvers that purposefully alter the life way of a people.

Accordingly, the Commission called upon the Navajo Nation and neighboring governments to ensure the protection, preservation, and practice of ceremonies and sacred sites, specifically in reference to the use of wastewater for artificial snow on *Dook'o'osliid* (the San Francisco Peaks).

Ch. 5 Free, Prior, and Informed Consent

Free, prior, and informed consent (FPIC), rooted in Article 3's right of self-determination, is an information-gathering and decision-making framework designed to protect and advance Indigenous rights. Under this framework, Indigenous Peoples must have full information, time, and resources to consider actions in advance, and the opportunity to freely give or withhold their agreement to legislation and other matters affecting them.⁶⁵ The requirements of FPIC apply from the earliest stages of lawmaking and development initiatives and continue through all stages of engagement.

In the United States, reforming government-to-government relationships consistent with FPIC has the potential to render current policies related to tribal consultation more effective. By promoting mutual agreement, tribal governments, Native Nations, and their partners may strengthen Indigenous rights, improve decision-making, and diminish conflict.⁶⁶

Free, Prior, and Informed Consent in the Declaration

Article 19 provides:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Other articles call for FPIC in particularized situations. For example, Article 11 calls for redress, potentially including restitution, with respect to Indigenous Peoples' "religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs." Article 28 prescribes redress, "that can include restitution or, when this is not possible, just, fair and equitable compensation" in the case of lands including sacred places, taken without the "free, prior and informed consent" of Indigenous Peoples.

Indigenous Peoples and Free, Prior, and Informed Consent in the United States

American Indian policy in the United States has, to some degree, always been informed by an ideal of consensual relations between governments, even if this relationship has often been dishonored in practice.

Hundreds of treaties commemorate agreements between tribes and the United States regarding governance, property, trade, and other matters. While Congress purported to end treaty making with tribes in 1871 through the passage of 25 U.S.C. Section 71, treaties remain the supreme law of the land today. Contemporary law and policy, focused on principles of tribal self-determination, have renewed the federal-tribal relationship and reinforced the federal government's trust responsibility to tribes.

Today, statutes such as the National Environmental Protection Act and National Historic Preservation Act require federal agencies to consult with Indian tribes on certain matters. Additionally, during the Clinton administration, Executive Order 13,175 mandated that all federal agencies establish policies for tribal

⁶⁵ Human Rights Council, [Study of the Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: A Human Rights-Based Approach](#), A/HRC/39/62 (2018) (Indigenous Peoples' own FPIC protocols are instruments of empowerment linked to right of self-determination.).

⁶⁶ Native American Rights Fund – University of Colorado Joint Project, [Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country](#) 46 (2019) (discussing tribal standards and models of FPIC.).

consultation.⁶⁷ Yet courts have often held that consultation is a mere procedural requirement, and that agencies need not change their substantive decisions to accommodate information shared by tribes, much less reach mutual agreement with them. By implementing the safeguard of FPIC, tribes and other governments have the opportunity to reinstitute genuinely consensual government – to – government relations.⁶⁸

Implementing the Declaration’s Free, Prior, and Informed Consent Articles in Tribal Law

Tribes may use the framework of FPIC in tribal law to set forth tribal consultation expectations with regard to both external agencies as well as entities operating under tribal jurisdiction. Tribes may wish to consider any or all of the following:

- Codify a tribal FPIC provision.
 - The **Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians’** consultation code establishes their expectations and procedures. For example, the code defines consultation as “the formal process of cooperation, negotiation, and mutual decision-making between two sovereigns.” The code notes that “[f]ederal agencies have the obligation of seeking out tribes and providing meaningful opportunities for consultation” which “should be on an ongoing basis.”⁶⁹
- Establish a permitting process regarding business operations on tribal lands and with tribal entities.
 - The **Swinomish Tribe** Business Code requires that business licenses be acquired before any business commences within Swinomish Indian Country, including special businesses, wholesale sellers, and retail sellers. It requires that a baseline level of information on the business be provided to the Tribe.⁷⁰
- Establish a permitting process regarding development on tribal lands and with tribal entities.
 - The **Tlingit and Haida Indian Tribes of Alaska** created a comprehensive development permitting system that requires prior permission before a permit can be granted for work on tribal lands.⁷¹ “No Person may perform or cause to be performed any Site Development work on any Subject Land ... without first obtaining a Tribal Site Development Permit.”⁷²
- Establish a permitting process for research regarding the tribe and its members.

⁶⁷ Exec. Order No. 13,175, 65 Fed. Reg. 67249 (Nov. 6, 2000).

⁶⁸ Compare with the U.S. State Department’s view that U.S. law already largely meets the standards of the Declaration. “For the United States, the Declaration’s concept of self-determination is consistent with the United States’ existing recognition of, and relationship with, federally recognized tribes ... [T]he United States recognizes the significance of the Declaration’s provisions on free, prior, and informed consent, which the United States understands to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken.” [Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples](#), U.S. DEP’T OF STATE (Jan. 12, 2011).

⁶⁹ Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Tribal Code, Chapter 1-8 Government-to-Government Consultation.

⁷⁰ Swinomish Tribal Code, Title 15 Business Regulations, Chapter 6 Business Licensing, Section 15-06.110 Business License Terms and Conditions.

⁷¹ Note, Articles 26 and 29 of the Declaration mandate that Indigenous Peoples have the right to control their own land and resources while the Declaration’s mandate to free, prior and informed consent extends to those actions that will impact tribes whether on or off tribal lands.

⁷² Tlingit and Haida Indian Tribes of Alaska, Title 11 Land and Natural Resources Code, Section 11.02.007 Tribal Site Development, B. Tribal Site Development Permit.

- The **Colorado River Indian Tribes** (CRIT) Human and Cultural Research Code requires prospective researchers (even CRIT agencies) to seek a permit before any research can commence within or about the Tribe.⁷³ This gives the Tribe significant protection and discretion. A tribal internal review board facilitates early and ongoing consultation.
- The **Hopi Tribe** Cultural Preservation Office has a protocol for obtaining the Tribe’s “informed consent” regarding the use of Hopi traditions, culture, and people as subject matter for research. The protocol includes various information requirements regarding the purpose and planned procedures of potential research, potential risks to the Tribe, potential benefits to the Tribe, and how researchers will protect privacy and confidentiality.⁷⁴
- Ensure mechanisms for participation and consent of citizens for tribal government decisions regarding natural resources and other matters.
 - The **Navajo Nation Human Rights Commission** adopted a resolution calling for FPIC compliance as outlined in the Declaration, by which the Navajo people have a right to participate in the final decision regarding the Navajo-Hopi Little Colorado River Settlement Act of 2012.⁷⁵

In these ways, tribal governments have used tribal law to frame internal and external standards for free, prior, and informed consent, pushing beyond the typical calls for meaningful consultation. Tribal FPIC can extend to a variety of different matters, often effectuated through permits, agreements, and legal codes.

⁷³ Colorado River Indian Tribes, Human and Cultural Research Code Section 1-205 Powers of the ERB.

⁷⁴ Hopi Cultural Preservation Office Protocol for Research, Section (1)(C).

⁷⁵ [Resolution of the Navajo Nation Human Rights Commission](#), NNHRCMAY-18-12, (May 18, 2012).

Free, Prior, and Informed Consent – Good Practice

In 2019, tribal governments in Washington State leveraged their tribal governing structures to develop a policy with the Attorney General regarding Indigenous Peoples and free, prior, and informed consent. While not tribal law-making per se, it is an important example of a tribal-state agreement implementing key provisions of the Declaration.

“Our policy objective,” explained Quinault Indian Nation President Fawn Sharp, “is to ensure no other sovereign is able to take unilateral action affecting our land, territories or people without our consent. It’s a pretty basic principle, but it’s been so difficult to achieve, just a basic understanding of inherent civil rights, basic human rights, that all tribes should possess.”¹

On May 10, 2019, Attorney General Bob Ferguson announced the enactment of the Tribal Consent and Consultation policy, as follows:

The AGO [Attorney General’s Office] will receive free, prior and informed consent prior to taking certain actions specified in this section that directly and tangibly affect Tribes, rights or tribal lands . . .

To the extent consistent with the Rules of Professional Conduct, and with the goal to avoid litigation whenever possible, the AGO will consult with a Tribe prior to filing civil litigation against a Tribe or a business owned by a Tribe. The AGO may request consultation on other issues to further the goals of this plan.

The AGO will provide notice to Tribes prior to . . . proposing legislation that may directly affect Tribes, rights or tribal lands;

The AGO will provide notice to Tribes after . . . filing a ballot title for a state initiative or referendum measure . . . that directly affects Tribes, rights or tribal lands.²

1. Frank Hopper, [State Attorney General announces free, prior and informed consent policy with Washington tribes](#), INDIAN COUNTRY TODAY (May 21, 2019) (Photo by Frank Hopper).

2. Washington State Office of the Attorney General, [“Tribal Consent & Consultation Policy”](#) (May 10, 2019).

Ch. 6 The Wellbeing of Children

The Declaration articulates broad protections for the human rights of Indigenous children, families, and peoples. These rights include, among others, rights to life and security of person, as well as identity and culture. Consideration of these rights in the United States could help to remedy past harms and promote the wellbeing of Indigenous children.⁷⁶

The Wellbeing of Indigenous Children in the Declaration

The Declaration's preamble recognizes "the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child."

Perhaps most importantly, Article 7 provides, "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group." Article 22 specifically recognizes Indigenous "youth" and "children," calling for "particular attention" to their "rights and special needs," in implementation of the Declaration.

Many other articles of the Declaration are also applicable to the wellbeing of Indigenous children. Article 9 recognizes the right of Indigenous Peoples to belong to an Indigenous community or nation, and Article 33 recognizes the right of Indigenous Peoples to determine their own identity. Article 8's protections against cultural assimilation and Article 14's rights to education are also important for children.

The Wellbeing of Indigenous Children in the United States

Indigenous children are over-represented in the child welfare system and also experience high levels of poverty and other socio-economic challenges.⁷⁷ Many of these problems are legacies of historical policies that removed Indian children from their families and destabilized their communities, educations, health, and cultures.⁷⁸

Through extensive portions of the nineteenth and twentieth centuries, federal policies aimed to extinguish tribes and assimilate Indigenous individuals into American society by specifically targeting Indigenous children.

The federal Indian boarding school program attempted to eradicate "Indianness" by removing children from their homes and families to residential schools where they were instructed in English, Christianity, and manual labor. Indian children received harsh punishments for speaking their languages or committing other so-called infractions.⁷⁹ While the boarding school model was eventually abandoned, removal continued through campaigns

⁷⁶ Native American Rights Fund – University of Colorado Joint Project, [*Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country*](#) 58 (2019) ("where a tribal law recognizes a particular right, a state court adjudicating the status of an Indian child from that tribe may afford the right more weight than if the right was merely recognized by a 'foreign' source of law.").

⁷⁷ Randall Akee, *How does measuring poverty affect American Indian Children*, BROOKINGS INSTITUTE, (2019).

⁷⁸ Terry Cross, *Child Welfare in Indian Country: A Story of Painful Removals*, HEALTH AFFAIRS, Vol. 33, No. 12 (2014).

⁷⁹ Mannes Marc, *Factors and Events Leading to the Passage of the Indian Child Welfare Act*, Arlington Vol. 74, Iss. 1 264 (1995) and Matthew L.M. Fletcher and Wenona T. Singel, *Indian Children and the Federal-Tribal Trust Relationship*, 85 NEB. L. REV. 885, 942 (2017).

to “adopt out” Indigenous children through systemic bias against Indigenous cultural and religious practices. By the 1970s, 25-35 percent of Indigenous children were being removed from their Indian families, with most being placed into non-Indian homes. Such practices had devastating impacts on the children and their communities.⁸⁰

The Indian Child Welfare Act (ICWA) of 1978 set federal standards for state child welfare proceedings regarding Indigenous children, providing notice to tribal governments and placement preferences for custodial placements with extended family and tribal communities.⁸¹ Yet, over forty years later, Indigenous families in the United States are still “four times more likely to have their children removed and placed in foster care than their White counterparts.”⁸² ICWA compliance across states is uneven, and there is no federal enforcement mechanism to ensure or monitor whether state courts comply with the statute.

Frequently, tribes apply the strongest – and sometimes *only* – pressure on state courts to identify Indigenous children, to ensure that families receive adequate and appropriate services, that they are prioritized in family or Indigenous out-of-home-placements, or to ensure that cases involving Indigenous children are transferred to tribal courts in compliance with ICWA.

ICWA is important legislation that helps to advance the rights of Indigenous children, families, and tribes enumerated in the Declaration.⁸³ The Declaration provides an important resource, insofar as it further elucidates and affirms rights to identity, family, language, education, and culture.

These may be employed in tribal law and advocacy to support Indigenous children, and also to respond to challenges to ICWA’s validity and constitutionality. The Declaration may also inspire tribal programs intended to support parents, families, and children, perhaps diminishing the need for state-based involvement in these cases.

⁸⁰ H.R. Rep. No. 95-1386, at 9 (1978).

⁸¹ 25 U.S.C. §§ 1901, et. seq. (1978).

⁸² National Indian Child Welfare Association, [About ICWA](#), visited June 2020.

⁸³ Kristen A. Carpenter and Lorie M. Graham, [Human Rights to Culture, Family, and Self-Determination: The Case of Adoptive Couple v. Baby Girl](#) (2014).

Implementing the Declaration’s Articles Regarding the Wellbeing of Indigenous Children into Tribal Law

Tribes may cite the Declaration in support of their right to determine membership of Indigenous children and to establish culturally relevant programs and custodial measures. Tribes may wish to consider any or all of the following:

- Affirm the right of the Indigenous Peoples to determine membership of Indigenous children, including development of membership rules and processes for children.
 - The **Cherokee Nation** tribal code provides for temporary automatic citizenship of newborn children, specifically to ensure tribal rights are protected under the Indian Child Welfare Act.⁸⁴
 - The **Navajo Nation** similarly provides for automatic enrollment of children born to enrolled members of the Navajo Nation, provided they are at least one-fourth degree Navajo blood.⁸⁵
- Develop tribal law on adoption, foster care, and parental rights.
 - The **Sault Ste. Marie Tribe of Chippewa Indians** defines culturally-relevant close family members and friends as “Fictive Kin.”⁸⁶
 - The **Oglala Sioux Tribe** defines “Tiospaye (‘extended family’): The root of the Lakota social structure. Tiospaye is comprised of the immediate families of brothers and sisters, their descendants, and relatives adopted through formal ceremony.”⁸⁷

More broadly, in the spirit of the Declaration’s preambular provisions on the “shared responsibility” of “families and tribal communities” in the “upbringing, training, education and well-being of their children,” tribal governments may decide to:

- Support tribal programs dedicated to pregnancy health and parenting skills, childcare and early childhood education, counseling for at risk parents and youth, restorative justice for juveniles, language and cultural immersion, and mentoring programs.
 - The **Choctaw Nation** provides support for pregnant and parenting teens,⁸⁸ while the **Cherokee Nation** runs a language immersion school for grades K-6,⁸⁹ and the **Ponca Tribe** has a program for high-risk youth.

In these ways, tribes are embracing the shared responsibility to protect the well-being of Indigenous children while simultaneously promoting their own self-determination, through innovative and active means, including extending recognition of and duties toward children and operationalizing their duties to protect.

⁸⁴ Cherokee Nation Tribal Code, Chapter 2: Policies and Procedures for Citizenship Applications, § 11A.

⁸⁵ Navajo Nation Tribal Code, Chapter 7: Membership in the Navajo Nation, § 701.

⁸⁶ Sault Ste. Marie Tribe of Chippewa Indians Tribal Code Chapter 30 Child Welfare Code 30.324.

⁸⁷ Oglala Sioux Tribal Code, Chapter 4: Child and Family Code, Wakanyeja Na Tiwahe Ta Woose, §402.2 (2) (2013).

⁸⁸ Choctaw Nation, “Guiding Adolescent Parents” at https://www.choctawnation.com/tribal-services/member-services/choctaw-support-expectant-and-parenting-teens-sept?fbclid=IwAR2DNcAnd59GMVHa2EIZef_FP8IvhfjS8mCljg3I5Zgqby_OLwwnuRjZTyI.

⁸⁹ Cherokee Nation, “Education Services” at <https://www.cherokee.org/all-services/education-services/sequoyah-schools/choke-immersion-school/?fbclid=IwAR0pLssoc7bCjgsyiC0phZ9s0jLqAxxR1tjneXuphMhli1TMuqK5TE2oafU>

The Wellbeing of Children – Good Practice

The Port Gamble S’Klallam Tribe is the first, and currently only tribe to directly administer Title IV-E federal funds for child welfare, including those related to Temporary Assistance to Needy Families (TANF), other child welfare services, and child support assistance.

The Port Gamble S’Klallam Child Welfare Program has been in operation since the mid-1980s. Child welfare programming includes a “S’Klallam-ized” version of Positive Indian Parenting, a parenting skills curriculum originally developed by the National Indian Child Welfare Association, and Family Group Decision Making, a form of family engagement. They also operate a pilot program in conjunction with the State of Washington to determine eligibility for Medicaid and basic food benefits. The Tribe provides these services to tribal members both on tribal lands and those within Kitsap County boundaries.

The Tribe additionally uses a definition of “extended family” which is broader than the federal definition.

Extended Family: This term does not have a precise definition. Under Port Gamble S’Klallam custom, there are formal and informal ties which bind the community.

Extended family ties are based on blood lines, marriage, friendship, and caring. All women in the community become "auntie" or "grandma" when they become a certain age, regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, "in-laws" and "step" relations are all extended family, any member of the Port Gamble S’Klallam community who is reliable, responsible, loving, and willing to care for a child may be considered extended family.

Port Gamble S’Klallam Tribal Code, Title 16: Family Protection Code, § 16.01.01(d).

Jeromy Sullivan, Tribal Council Chairman of the Port Gamble S’Klallam Tribe notes, “The real winners here will be Tribal families that chose to open their homes for fostering or adopting children. Within our own program, we’ll be able to provide dedicated staff and grow services that support these families.”¹

1. Press Release, “Port Gamble S’Klallam Tribe Becomes First Tribe in the Nation to Host Own Foster Care, Guardianship Assistance and Adoption Program” at https://www.pgst.nsn.us/images/news/Title_IV-E_release.pdf.

Ch. 7 Climate and the Environment

Tribes have a deep connection to their aboriginal lands – both within and outside of tribal control – implicating not only rights of property and jurisdiction, but also religion, culture, and economics. Many tribes regard the duty of stewardship of their lands as a core cultural and spiritual mandate. Simultaneously, Indigenous lands are at the forefront of climate change impacts, effectively the canary in the world’s coalmine. The ability of tribes to address environmental issues is integral to the survival of Indigenous Peoples.⁹⁰

Climate and the Environment in the Declaration

The Declaration affirms Indigenous Peoples’ rights to preserve, protect, and continue traditional, cultural, and spiritual practices tied to their lands. Critically, this includes the right to self-determine environmental regulations and responses. Articles 7, 8, 10, 11, 13, 19, 24, 25, 26, 29, 31, and 31 specifically address traditional lands and resources, and along with Article 3, protect the ability of Indigenous Peoples to freely determine how they should be used.

Notably, Article 25 states “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 29 states “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”

Indigenous Peoples and the Environment in the United States

Indigenous Peoples in the United States have been forcibly removed from significant portions of their homelands. Federal policy efforts to assimilate Indigenous Peoples have decimated traditional lifeways, including land stewardship practices and food gathering. Federal and federally-authorized resource extraction and other environmentally disastrous projects have been disproportionately concentrated on tribal lands, exposing Indigenous populations to toxic pollutants.

⁹⁰ Native American Rights Fund – University of Colorado Joint Project, [*Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country*](#) 60-61 (2019) (calling for education of scientific and land management agencies regarding indigenous knowledge and climate change).

Reservations have become prime locations for solid waste landfills, military weapons testing, and nuclear storage facilities.⁹¹ Yet, according to a 2019 report by the United States Government Accountability Office (GAO), the Environmental Protection Agency (EPA) does not have reliable data to identify National Priorities List sites that are located on tribal property, or that affect tribes.⁹²

The federal government has built an environmental regulatory framework, notably through the Clean Air Act and the Clean Water Act.⁹³ However, tribes, only after-the-fact, have been slowly deemed eligible to regulate under its provisions. A plethora of overlapping and contradictory statutes and regulations, federal restrictions, and bureaucracies often thwart tribal attempts to develop comprehensive and meaningful environmental regulatory schemes.

Environmental justice issues are now coming to a head as the threats of climate change exacerbate numerous vulnerabilities. Climate change is shifting the ranges of plant and wildlife species, including those of cultural importance to Indigenous Peoples. This change has already started to impact traditional ways of life, including hunting, gathering, and fishing, as well as ceremonial sites and items that are integral to Indigenous Peoples' cultures and histories.

Implementing the Declaration's Environmental Articles in Tribal Law

Incorporating the Declaration's environmental articles in tribal laws can help leverage tribal environmental self-determination. Tribes may wish to consider any or all of the following:

- Establish environmental protection policies to determine and oversee tribal environmental priorities, engage with federal, state, and tribal counterparts, and regulate environmental impacts on tribal lands.
 - The **Navajo Nation Environmental Policy Act**⁹⁴ provides guidance for the protection of air, water, and land resources, and the recognition that a clean environment contributes to maintaining harmony and balance in the Navajo Nation.
- Develop climate change adaptation, mitigation, and vulnerability plans.
 - The **Swinomish Indian Tribal Community Climate Change Proclamation**⁹⁵ was produced after a destructive storm in 2006 and illustrates the importance of undertaking efforts to determine the potential local effects of climate change, as well as the importance of tribal self-determination in developing these plans.
- Codify traditional knowledge as an acknowledged and valued resource that should inform environmental regulations and that also should be protected and used only with the free, prior, and informed consent of the tribe.
- Prioritize the preservation and revitalization of traditional ecological knowledge, including knowledge of plant life, animal behavior, and conservation methods, as intertwined components of tribal culture inextricably linked with language.

⁹¹ Robert Bullard, *It's Not Just Pollution*, OUR PLANT, Vol. 12, No. 2, 2001.

⁹² Government Accountability Office, Report to Congressional Requesters: SUPERFUND – EPA Should Improve the Reliability of Data on National Priorities List Sites Affecting Indian Tribes, Jan. 2019.

⁹³ Clean Air Act, 42 U.S.C. 7474(c) and Clean Water Act, 33 U.S.C. 1377(e).

⁹⁴ [Navajo Nation Environmental Policy Act](#), Title 4, Chapter 9, §§ 901-906.

⁹⁵ [Proclamation of Swinomish Indian Senate on a Swinomish Climate Change Initiative](#) (Oct. 2, 2007).

- The **Navajo Nation** Human Rights Commission (NNHRC) adopted a resolution opposing the Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012 on the grounds that it violated the human rights of the Diné people by denying them adequate participation in the water resource decision. Relying on the Declaration's Article 26, the NNHRC asserted that "[w]ater is a Navajo natural resource," belonging to "Indigenous peoples." The NNHRC elaborated from Navajo tradition that water and other resources "are fundamental, sacred and spiritual sustenance to the Diné people since time immemorial," and are linked to religion, culture, sustenance, clan identifications, and Navajo ceremonies.⁹⁶

In these ways, tribes have built environmental protection into the framework of their tribal law, leveraging their tribal powers to push for environmental accountability. In pushing for tribal environmental regulations, tribes have also pushed for an Indigenous perspective of the environment that values traditional knowledge.

⁹⁶ [Resolution of the Navajo Nation Human Rights Commission](#), NNHRCMAY-18-12, (May 18, 2012).

Climate and the Environment – Good Practice

In March of 2019, the Karuk Tribal Department of Natural Resources released their Karuk Climate Adaptation Plan. Within their plan, the Tribe acknowledges the daunting challenges that climate change poses. But they also frame climate change, and their obligations to mitigate its impacts, as opportunities to adapt and restore their human responsibilities and relationship to the natural world.

- In doing so the Karuk Tribe reaffirms the importance of traditional stewardship practices in environmental decision-making: The Klamath River and its tributaries, forests, grasslands and high country are essential for the cultural, spiritual, economic and physical health of Karuk people.
- While the changing climate poses serious threats for Karuk culture, sovereignty and all life on earth, it is perhaps most productively viewed as an opportunity to assert and expand Karuk traditional practices, tribal management authority, sovereignty and culture.
- Karuk people have long been part of the ecosystem. Climate adaptation is about restoring human responsibilities and appropriate relationships to the natural world.
- Climate adaptations for species and habitats center around the revitalization of Karuk cultural management, the restoration of traditional fire regimes, reducing impacts from intervening factors, the expansion of Karuk tribal management authority and capacity, community engagement and public education, increased interjurisdictional coordination, and expanded research and monitoring.
- ...
- The climate planning work of the Karuk is unique for its central and detailed focus on fire, its attention to restoring human responsibilities and traditional ecological knowledge, and its parallel emphasis on collaboration, public education and policy advocacy.
- ...
- Climate change is happening on such a large scale that it can appear to be a natural force, even as we know it results from the emissions and build-up of carbon dioxide and other climate gasses in the atmosphere. Ultimately, climate change is the product of unsustainable Western land management practices and the rise of political and economic systems for which indigenous people hold little to no responsibility. In this context, the crisis posed by climate change is also a strategic opportunity not only for tribes to retain cultural practices and return traditional management practices to the landscape, but for all land managers to remedy inappropriate ecological actions, and for enhanced and successful collaboration in the face of collective survival.
- The Karuk Tribe's work on restoring traditional fire regimes holds the potential to inform both climate adaptation and mitigation efforts, given that wildfires themselves generate emissions, and a reduction in high severity fires could result in a reduction in forest emissions.
- This is a living document that will necessarily evolve over time as information and needs develop.

Ch. 8 Gender Rights

Gender rights encompass the right of every person to be free of discrimination based on gender. Tribal practices regarding genders may have been based on religious and spiritual beliefs, as well as social and economic practices. Historically, federal policies of assimilation disrupted tribal laws, customs, and norms, including in some tribes, matrilineal kinship and the recognition of multiple genders. Several articles of the Declaration may facilitate the revitalization of traditional customs within a contemporary framework of gender inclusion and equality.⁹⁷

Gender Rights in the Declaration

The Articles relevant to gender rights include Articles 3, 4, 5, 7, 11, 12, 17, 20, 21, 22, 23, 24, 32, 33, 35, and 44. Article 22 notes that: “[p]articlar attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.” Article 22 continues, specifically noting: “Indigenous women and children [shall] enjoy the full protection and guarantees against all forms of violence and discrimination.” Article 44 provides: “All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.”

Indigenous Peoples and Gender Rights in the United States

Pre-contact, Indigenous Peoples had many systems of dividing labor, recognizing leadership, and valuing community members, some of which may have been organized around gender. These traditional structures often held deep cultural significance for tribal communities. The process of colonization, however, disrupted Indigenous cultures, and often imposed – through Christianity or other mechanisms – the gender norms of the dominant, European-based society.⁹⁸ Ramifications for Indigenous Peoples remain today, and include both gender-based discrimination and violence.

Nationwide, studies suggest that more than 4 in 5 Indigenous women have been affected by violence and more than half of Indigenous women have experienced sexual violence.⁹⁹ At one time, Indigenous women faced murder rates ten times the national average.¹⁰⁰ LGBTQ2S+¹⁰¹ are disproportionately represented in suicide statistics, survival sex and drug work, and sex and human trafficking. Reproductive justice is critically limited, eroded by poverty, the remote geography of many Indian reservations, and significant discrimination stemming from the forced sterilization of Indigenous women by the federal government through the 1970s.¹⁰² That tribes must navigate a complex jurisdictional maze to prosecute most gender-based crimes only compounds

⁹⁷ Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (2007).

⁹⁸ Ann E. Tweedy, *Tribal Laws and Same-Sex Marriage: Theory, Process, and Content*, 46 COLUM. HUM. RTS. L. REV. 104, 157-58 (2015) and Andrew Gilden, *Preserving the Seeds of Gender Fluidity: Tribal Courts and the Berdache Tradition*, 13 MICH. J. OF GENDER AND LAW 237 (2007).

⁹⁹ André B. Rosay, *Violence Against American Indian And Alaska Native Women and Men: 2010 Findings From The National Intimate Partner And Sexual Violence Survey*, National Institute of Justice Research Report (May 2016).

¹⁰⁰ R. Bachman et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Responses: What Is Known*, National Institute of Justice Programs (2008).

¹⁰¹ See National Learning Community on Youth Homelessness, “LBGTQ2S Terms and Definitions” at www.lgbtq2stoolkit.learningcommunity.ca (last accessed Jan. 1, 2021) (defining LGBTQ2S as referring to “Lesbian, Gay, Bisexual, Transgender, Queer, Two-Spirit, and Ally.”)

¹⁰² Jane Lawrence, *The Indian Health Service and the Sterilization of Native American Women*, 24 AM.IND. Q. 400 (2000).

these issues.¹⁰³

Inadequate protection for gender rights can impact access to membership, housing, healthcare, education, leadership, and decision-making roles.

Tribal governments and Native Nations can improve gender rights by examining explicit and implicit gender requirements for leadership and membership, protecting victims and survivors of domestic violence, assuring widespread access to reproductive care, and dismantling gender requirements for marriage, adoption, and tribal identification cards.

Implementing the Declaration's Gender Rights Articles in Tribal Law

In addressing issues around gender rights and implementing solutions to gender disparities, tribes may wish to consider any or all of the following:

- Criminalize gender-based violence, including domestic violence, rape, sexual assault, and strangulation.
- Provide for victims' rights in legal proceedings and prioritize the provision of health and legal resources to gender-based violence victims.
- Ensure LGBTQ2S+ members are treated equally under tribal law, including access to marriage and adoption, and through the use of gender-inclusive pronouns throughout tribal law.
 - The **Tulalip Tribes** allow anyone over the age of 18 to petition to adopt a child, and, if married, require that the spouse also be at least 18 years of age.¹⁰⁴
- Prohibit harmful LGBTQ2S+ practices, such as so-called “conversion” therapies.
- Examine the extent to which, if at all, colonial patriarchal ideologies have created power differences between genders, and rectify them through meaningful workplace discrimination protections, equitable membership, and leadership criteria.
 - The **Suquamish Tribe**¹⁰⁵ includes both gender and sexual orientation as protected classes in employment. The Tribe's employment statute provides far-reaching protection for employees by assuring equal access to promotions and compensation, in addition to non-discrimination in hiring practices. Notably, the definition of discrimination includes harassment, which is disproportionately felt by non-men and non-heterosexual people, and covert discrimination like unequal treatment and disparate impact.
- Facilitate the dissemination of educational materials on reproductive health and wellness.
 - The **Chickasaw Nation** Women's Clinic and Obstetrical Department provides comprehensive services for expectant people, new parents, family planning, cancer screenings, STI testing, and more.

¹⁰³ INDIAN LAW AND ORDER COMM'N, [A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES](#) 156 (2013).

¹⁰⁴ [Tulalip Tribal Codes, Title 4, Ch. 4.05 Juvenile and Family Code, Section 4.05.990: Adoption](#) (“Any person at least 18 years old may file a petition...If the petitioner is married, his or her spouse...”).

¹⁰⁵ [Suquamish Tribe Employment Discrimination Code, Section 18.1.5.](#)

- Form task forces to gather community-specific research and develop culturally- appropriate policies.

In these ways, tribes have acknowledged and responded to gender-based disparities and violence through their tribal laws and resources. Tribes are reclaiming Indigenous conceptions of gender, recognizing their duties to provide protections, and actualizing those protections.

Gender Rights – Good Practice

The Yurok Tribal Court contracted with Sovereign Bodies Institute (SBI), a Native American-owned non-profit research center dedicated to addressing gender and sexual violence against Indigenous Peoples, to collaboratively compile and analyze data on past and ongoing missing and murdered Indigenous women, girls and Two-Spirit persons (MMIWG2) incidents. Together, they formed the To' Kee Skuy' Soo Ney-Wo-Chek' (I will see you again in a good way) Project.¹ The project aims to establish a more effective system of investigation surrounding missing and murdered IndigenousMMIWG2, as well as an enhanced level of protection in California.

The Project builds on over five years of work that SBI has done to build a MMIWG2 database spanning the Americas. SBI manages the much-needed database, which is available to tribes, Indigenousservice providers, and other relevant stakeholders upon request. It will also assist Tribal, county, state and federal law enforcement agencies in recording and resolving cases.

Working with Yurok Tribal Court attorneys and administrative staff, SBI researchers have assembled and evaluated 165 MMIWG2 cases for their first-year report. The multidisciplinary team also interviewed numerous survivors and their families. With consent, their stories will be used to inform law enforcement, legislators and court officials as well as direct service providers and others about the many facets of this issue.

In addition to creating the comprehensive database, the project endeavors to introduce a formal protocol, integrating tribal, county and federal law enforcement resources into the response to MMIWG2 cases. The first recommendation is for local and federal law enforcement agencies to form cooperative agreements with their tribal counterparts. In conjunction with clarifying jurisdictional concerns up front, this will ensure that an adequate quantity of personnel is dedicated to these cases, 97 percent of which occur outside of tribal law enforcement jurisdictions.

The Yurok Tribal Police Department cross-deputization agreements with the Humboldt and Del Norte County Sheriffs' Offices are used as an example of positive working relationships among law enforcement agencies. The agreements authorize Yurok officers to enforce all state laws. There is also a need for state courts to strengthen relationships with tribal courts. Specifically, the report calls for an expansion of concurrent jurisdiction arrangements, such as the joint Family Wellness Courts.

¹. Yurok Tribe Press Release, "[Yurok Tribal Court, SBI release progress report on pivotal project](#)," (Jul 20, 2020).

Ch. 9 Business and Economic Development

Indigenous Peoples have a collective right to participate in economic matters on their own terms. Many tribes foster economic development and entrepreneurship as a matter of self-determination. Tribes additionally have the right to ensure that entities doing business with the tribe and on tribal lands comply with human rights' norms regarding impacts on individuals, communities, lands, and resources.¹⁰⁶

Business and Human Rights in the Declaration

The Declaration recognizes Indigenous Peoples' right to development. Article 3 recognizes that Indigenous Peoples' right to self-determination includes the right to "freely pursue their economic, social, and cultural development." Article 32 recognizes that Indigenous Peoples have "the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources." Article 39 recognizes that Indigenous Peoples have the right to "financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration."

The Declaration has a strong role to play in ensuring that businesses operating within tribal lands comply with their human rights obligations to tribes.¹⁰⁷ These issues are particularly salient with respect to natural resource development and other industries that threaten tribal land, environments, health, and wellbeing. With respect to extractive industries, former Special Rapporteur on the Rights of Indigenous Peoples, S. James Anaya, concluded in his 2013 report that self-determination and related rights may be enhanced when Indigenous Peoples freely choose to develop their own resources, so long as they have adequate capacity and strong internal governance institutions.¹⁰⁸ The UN's "Sustainable Development Goals" and "Protect, Respect and Remedy" framework on business and human rights reaffirm that businesses can contribute to the realization of human rights, for example, by reducing poverty and operating responsibly.¹⁰⁹

Indigenous Peoples and Business Rights in the United States

Indigenous Peoples' economies have, for centuries, been diminished, if not decimated, by the taking of Indigenous resources. More recently, burdensome federal regulatory structures on tribal ventures have sometimes hindered tribe's development efforts. A recent study by the UN Expert Mechanism on the Rights of Indigenous Peoples highlights both the need to restore tribal economies and businesses and to provide a foundation for sustainable development, consistent with Indigenous Peoples' values, going forward.¹¹⁰

Examples in the United States reveal the complexity of remedying past injustices while fostering self-determination in the realm of economic development and business. For example, while the Alaska Native Claims Settlement Act of 1971 purported to "settle" vast Indigenous land claims in Alaska through substantial monetary

¹⁰⁶ Native American Rights Fund – University of Colorado Joint Project, *Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country* 47 (2019) (suggesting the business case needs to be made to investors, financial institutions, and companies regarding FPIC).

¹⁰⁷ For research on this topic, see [First Peoples Worldwide](#).

¹⁰⁸ Report of the UN Special Rapporteur on the Rights of Indigenous Peoples, *Extractive Industries and Indigenous Peoples*, A/HRC/24/41, para. 11 (2012).

¹⁰⁹ Report of the Special Representative of the Secretary-General, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, A/HRC/8/5, para. 2 (2008).

¹¹⁰ Human Rights Council, *Good Practices and Challenges in Business and in Access to Financial Services by Indigenous Peoples: Report*, A/HRC/36/52 (August 8, 2017).

payments and recognition of Indigenous title to certain lands, it has been criticized for imposing Western-style corporate models on traditional Alaska Native communities, paving the way for widespread natural resource development by outsiders.¹¹¹

Tribes are considering many approaches to economic development and business on their own terms today. Many of these are undertaken with attention to Indigenous Peoples' commitment to self-determination, institution-building, and with an effort toward implementing best practices in relationships with communities and partners.¹¹² In the United States, casino gaming has been a significant driver of tribal revenue, the success of which is rooted in tribal self-determination and the effective exercise of regulatory powers over tribal territory.

Many tribal development opportunities exist, including cultural tourism, food sovereignty, and contemporary arts, which are all showing a revival in various parts of Indian Country. All have the potential to drive economic development, while also advancing rights to culture, health, traditional knowledge, and language.¹¹³

Implementing the Declaration's Business Articles in Tribal Law

Tribal governments can establish stable infrastructure and opportunities for economic development both for tribal members and others. Tribes may wish to consider any or all of the following:

Entrepreneurship

- Use tribally-chartered businesses and private entities focused on tribal business development to adopt and pursue the values of the Declaration, such as through tribal law, mission statements, or programs.
 - The **World Indigenous Tourism Alliance** articulates its mission by reference to the Declaration:

The World Indigenous Tourism Alliance is an Indigenous-led global network of Indigenous and non-Indigenous peoples and organizations who seek to give practical expression to the United Nations Declaration on the Rights of Indigenous Peoples, through tourism.

We are committed to working with Indigenous communities, tourism industry entities, states, and NGOs which have an interest in addressing the aspirations of Indigenous peoples seeking empowerment through tourism and producing mutually beneficial outcomes.¹¹⁴

- The **Cherokee Nation's** partnership with telecommunications company Verizon for COVID-19 elder care and elementary distance learning, both to be conducted in the Cherokee language, advances Indigenous Peoples' rights to use, revitalize and transmit their languages, pursuant to Articles 13 and 14 of the Declaration.

Regulation

Tribes can use the Declaration as a tool to shape their business relationships in such a way as to affirm self-determination by enacting laws or adopting civil codes to address issues that arise in the context of economic

¹¹¹ THOMAS R. BERGER, VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION vii–viii (1985).

¹¹² ROBERT J. MILLER, RESERVATION "CAPITALISM": ECONOMIC DEVELOPMENT IN INDIAN COUNTRY (2012).

¹¹³ Lyric Aquino, *Indigenous food sovereignty movement gains traction*, Native American Journalists Association (Sept. 18, 2019).

¹¹⁴ [The World Indigenous Tourism Alliance](#).

development.

- Ensure that sovereign immunity protections are clear and consistent.
 - **Colorado River Indian Tribe** Business and Profession Code Section 1-117 Sovereign Immunity simply notes “[n]othing herein shall be construed as a waiver of the Tribes’ sovereign immunity from suit.”¹¹⁵
- Enact tribal business entity regulatory codes.
 - The **Colorado River Indian Tribes** Business and Professions Code Section 1-111 Conditions of License asks for commitments from business licensees, including that “[e]ach licensee shall comply with all tribal laws, including but not limited to: tribal tax laws, Indigenous employment and contracting preference laws, and applicable federal law.”¹¹⁶
- Enact a tribal Uniform Commercial Code.
 - The **Navajo Nation** enacted a Uniform Commercial Code, noting its purposes to include a simplified, clarified, and modernized law, to permit the continued expansion of commercial practices, and to make uniform the law of commercial transactions.¹¹⁷
 - Enact a secured transaction code.
- Provide programming and training on Indigenous Peoples’ entrepreneurship, consistent with United Nations resources and examples in the United States.¹¹⁸

In these ways, tribes have provided for economic self-determination that fits within a holistic tribal vision for collective prosperity.

¹¹⁵ Colorado River Indian Tribes, Business and Professions Code Section 1-117 Sovereign Immunity.

¹¹⁶ Colorado River Indian Tribes, Business and Professions Code Section 1-111 Conditions of License.

¹¹⁷ Navajo Nation Uniform Commercial Code, Section 1-102.

¹¹⁸ United Nations, Department of Economic and Social Affairs, Indigenous Peoples: Resources, at <https://www.un.org/development/desa/indigenouspeoples/publications/desktop-publications.html>.

Business and Economic Development – Good Practice

The Thunder Valley Community Development Corporation (CDC) is located on the Pine Ridge Indian Reservation, home to the Oglala Lakota. They seek to empower Lakota youth and families to improve the health, culture, and environment of their communities through the strengthening of cultural identity. They offer programs in education, youth leadership, food sovereignty, language, housing and homeownership, workforce development, and social enterprise.

Thunder Valley CDC's Workforce Development Through Sustainable Construction Program trains and educates adults, 18 to 26 years old, in the skills and methods necessary for eco-friendly, sustainable home construction. Through classroom and hands-on training, participants gain the skills and experience necessary to join the construction industry, continue their education, and contribute to their local economy.

In 2012, on behalf of the Oglala Lakota Nation, through a Department of Housing and Urban Development Sustainable Communities Regional Planning Program, Thunder Valley CDC developed Oyata Omniciyé | Oglala Lakota Sustainable Regional Plan.¹

Recommendations and implementation strategies were developed for twelve initiatives, and after a two-year planning process, the Oglala Lakota people and Thunder Valley CDC began to take on some of the plan's recommended implementation strategies, including purchasing a 34-acre site to implement a Model Regenerative Community. The Model Regenerative Community Master Plan was developed with performance goals to increase Lakota community vitality culturally, socially, environmentally, and economically.

¹. Oyata Omniciyé | [Oglala Lakota Sustainable Regional Plan](#).

Ch. 10 Education Rights

Indigenous Peoples have a right to an education that is inclusive, reflective of their histories, and relevant to their future.

Education in the Declaration

Article 14 of the Declaration affirms the right of Indigenous Peoples to create and lead education systems as they affect Indigenous children, noting specifically that “Indigenous peoples have the right to establish and control their educational systems and institutions, providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning.” This Article affirms these rights for both people who live in their communities, and those outside their communities. The Declaration also discusses education rights in Articles 13, 15, and 21.

Indigenous Peoples and Education in the United States

Provisions regarding Indigenous education appeared in the earliest colonial laws.¹¹⁹ Both European colonialists and the federal government used education systems to assimilate Indigenous Peoples and undermine tribal systems.¹²⁰ Many prominent colleges and universities were established explicitly to educate and assimilate Indigenous youth.¹²¹ Educational policies were marked with compulsory boarding schools, punishment for speaking Indigenous languages, and systemic under-funding.¹²² By 1926, nearly 83 percent of all Indigenous school-age children were attending one of 357 boarding schools operated in 30 different states.¹²³ In 1969, the federal government acknowledged that its Indigenous educational policy was “a failure of major proportions.”¹²⁴ Subsequently, federal Indian education laws and policies instituted some positive changes, but they did not address the historical assimilationist and genocidal practices which continue to impact Indigenous Peoples today.¹²⁵

The Indian Self-Determination and Education Act of 1975 allowed for the transfer of control of Bureau of Indian Education-funded schools to tribes and Indigenous organizations.¹²⁶ Today over 130 of these 180 schools are tribally controlled. But these schools serve less than 10 percent of the total K-12 Indigenous population nationwide; the vast majority of Indigenous K-12 students attend state public schools both on and off tribal lands. Many state public schools have a history of discriminating against Indigenous Peoples.

¹¹⁹ COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, §22.03 “Education,” (Nell Jessup Newton, et. al., eds., 2019) (citing Alice C. Fletcher, *Indian Education and Civilization*, Bur. of Educ. Special Report, S. Exec. Doc. No. 48-95, at 28, 39 (GPO 1888) (Klaus Reprint 1973)). These early provisions appear to have been part educational and part attempts to obtain hostages. *See id.* at 29 (describing 1663 demands for Potomac children as hostages who would be given English education)

¹²⁰ ESTELLE FUCHS AND ROBERT J. HAVIGHURST, *TO LIVE ON THIS EARTH: AMERICAN INDIAN EDUCATION* (1972); Jon Reyhner and Jeanne Eder, “A History of Indian Education,” in *TEACHING AMERICAN INDIAN STUDENTS* 33, 35 (Jon Reyhner ed., 1992).

¹²¹ [Charter of the President and Fellows of Harvard College](#) (May 31, 1650) (“for all accommodations of buildings and all other necessary provisions that may conduce to the educations of the English and Indian youth of this country in knowledge and godliness.”)

¹²² Senate Special Subcomm. on Indian Educ., Comm. on Labor and Public Welfare, *Indian Education: A National Tragedy - A National Challenge*, S. Rep. No. 91-501, at 64 (1969)

¹²³ National Native American Boarding School Healing Coalition, “[U.S. Boarding School History](#)” (accessed Jan. 14, 2021).

¹²⁴ *Indian Education: A National Tragedy—A National Challenge*, S. Rep. No. 91-501, at xi (1969).

¹²⁵ *Id.* at 107.

¹²⁶ 25 U.S.C. § 5301, et. seq.

The Every Student Succeeds Act of 2015¹²⁷ has ushered in positive recognition and opportunity for tribal self-determination within education. Yet, the Act remains largely unfunded and unimplemented. While some state laws and successive reauthorizations of the Elementary and Secondary Education Act of 1965¹²⁸ have included increased recognition of tribal sovereignty, state and federal law still has not responded fully to all of the suggestions from Indian Country, and much of both the state and federal legal reforms remain unfunded and unimplemented to the detriment of tribes and Indigenous students.

Generations of inadequate and inappropriate education have left a deep scar. Even with newer programs in federal Indian education, failure to fund initiatives limits their efficacy.

Implementing the Declaration's Education Articles in Tribal Law

Tribes that wish to implement the rights affirmed by the Declaration to establish and control educational systems and, further, to incorporate Indigenous culture and language into their educational mission, may wish to consider any or all of the following:

- Codify the value of education as a component of tribal law.
 - The **Ho-Chunk Nation** has explicitly adopted the Declaration as part of its code. Regarding reforming education, the Nation's Cultural and Natural Resources Code provides that the Ho-Chunk Nation will:

Guarantee the right to mother-tongue education for enrolled Ho-Chunk Nation children [and]...[a]llocate the funding and resources needed to preserve and develop the Ho-Chunk Language and particularly education.... to re-affirm our commitment to the promotion, preservation and enhancement of our language, culture and traditions to all enrolled members of the Ho-Chunk Nation and future generations.¹²⁹

- Operate a tribal school, which includes curricula that prioritizes Indigenous practices and language.
 - The Keres Children's Learning Center works in partnership with the **Pueblo de Cochitito** offer an English/Keres bilingualism and biculturalism curriculum in the local Montessori school. Notably, the school acknowledges the Keres language of Cochiti is the intellectual property of the Tribe, and that the community is primary in both secular and religious matters.¹³⁰
- Push for state laws that recognize a role for tribes as sovereigns in PreK-12 state public school education.
- Hold state public schools accountable for state and federal law mandates that recognize roles for tribes as sovereigns in PreK-12 public school education.
 - After recent pressure from tribes in Alaska, the **Ketchikan Gateway Borough School Board** agreed to give hiring power and oversight to tribal leaders.¹³¹ Tribal leaders will hold 20 percent of the seats on teacher hiring committees in an effort to implement culturally-

¹²⁷ Pub. L. 114-95 (2015).

¹²⁸ Pub. L. 89-10 (1965).

¹²⁹ Ho-Chunk Nation Code (HCC) Title 7: Cultural and Natural Resources Section 4 – [Ho-Chunk Nation Language And Culture Code](#) (2016).

¹³⁰ Keres Children's Learning Center, "KCLC Pueblo de Cochiti Partnership," at <https://kclcmontessori.org/pueblo-de-cochiti/> (last accessed Feb. 12, 2021).

¹³¹ Stone, E., "[Ketchikan's School Board Agrees To Give Tribal Leaders Input On Hiring](#)," Alaska PublicMedia (2020).

appropriate practices to support Alaska Native students, and through doing so, reduce the dropout rate.¹³² The School Board hopes “additional perspectives in hiring committees lets those hiring committees look for the qualities and look for the educational experience and backgrounds that will help...hire staff and faculty that will be successful in reaching and working with...Native students.”¹³³

- Hold state public schools accountable for federal and state law mandates designed to improve Indigenous education and to ensure that Indigenous children are treated equitably and are accommodated fairly.
- Require Bureau of Indian Education-funded and state public schools to teach accurate history regarding the contemporary legal and political status of Indian tribes, as well as Indigenous Peoples’ rights as more broadly articulated in the Declaration.

In these ways, tribes have reclaimed educational self-determination to ensure that Indigenous youth receive a comprehensive education steeped in tribal values.

¹³² *Id.*

¹³³ *Id.*

Education Rights – Good Practice

Tribally-controlled colleges and universities provide higher education to American Indians through programs that are locally and culturally-based, holistic, and supportive. The first tribally-controlled college was established in 1968 by the Navajo Nation. Today there are 38 Tribal Colleges and Universities with more than 75 sites in the United States providing access to higher education to over 80 percent of Indian Country.

Tribal Colleges started as two-year institutions, but now 14 of the colleges offer bachelor's degrees and five offer master's degrees. In 1994, in recognition of the essential ties between the colleges, tribal lands, and local economic development, Congress designated Tribal Colleges as land grant institutions. In 1996, President Clinton issued a White House Executive Order on Tribal Colleges and Universities that directed all federal departments and agencies to increase their support to these institutions.

Tribal College students are typically nontraditional students, with about half over age 25. About 25 percent are single parents; 62 percent are female; and 64 percent attend college on a full-time basis. For more than 40 years, Tribal Colleges have changed the lives of thousands of students who might otherwise not have pursued higher education.

Ch. 11 Land Rights

While worldviews and cultures vary, many Indigenous Peoples maintain a close relationship with the natural world and to the Earth.¹³⁴ Indeed, Indigenous Peoples' subsistence practices, political jurisdiction, languages, cultures, and religions, are all bound to land. Around the world, dispossession of land has caused tremendous harm to Indigenous Peoples in these realms. Accordingly, the Declaration calls for restitution of past dispossession and recognition of Indigenous Peoples' ongoing rights to land.

Land Rights in the Declaration

The Declaration recognizes Indigenous Peoples' land rights in Articles 25-28, among others.

Articles 25 and 26 speak to Indigenous Peoples' relationships with the land, as a matter of Indigenous customary law, along with ownership, occupation, and use rights. While Article 25 notes Indigenous Peoples have the right to maintain their spiritual relationship to the land, Article 26 states that Indigenous Peoples have the right to their lands by way of their traditional ownership. Article 27 calls for an equitable land claims process focused on current land rights, and remedies for past dispossession of Indigenous Peoples' land rights, stating:

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

These articles on land rights should be read in conjunction with Article 3 on self-determination, Article 37's recognition of treaty rights, Article 31's protections for traditional knowledge associated with the land and its resources, and the many articles recognizing cultural rights, which are so often associated with the land. In addition, the articles recognizing Indigenous Peoples' own governing institutions and laws (Arts. 3, 4, 5, 34), are especially important to tribal governments and Native Nations who wish to affirm and strengthen jurisdictional and governance rights vis à vis Indigenous lands.

Indigenous Land Rights in the United States

While Indigenous Peoples have their own longstanding laws, customs, and traditions concerning land tenure, colonial powers, and later the United States, often imposed their own systems of property rights in the Americas. For example, when the U.S. Supreme Court adopted the "doctrine of discovery" in the 1823 case of *Johnson v. M'Intosh*,¹³⁵ it set the foundation for the federal Indian trust doctrine and the notion of split title, which exists to this day, wherein the United States holds Indian lands in trust for tribal governments and Native Nations. Subsequent federal policies designed to expedite the dispossession of Indigenous lands included numerous Removal Acts, the General Allotment Act (Dawes Act) in 1887,¹³⁶ and the abrogation of Indian treaties.¹³⁷

¹³⁴ Kristen A. Carpenter and Angela R. Riley, [Privatizing the Reservation?](#), 71 STAN. L. REV. 791 (2019).

¹³⁵ 21 U.S. (8 Wheat.) 543 (1823).

¹³⁶ 25 U.S.C. § 331, et. seq., Pub. L. 49-105.

¹³⁷ See *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). *But see, United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980) (holding that an 1877 Act abrogating the Fort Laramie Treaty, while permissible, effected a taking of tribal property necessitating "just compensation" to the Lakota.).

Even Constitutional protections against the taking of lands have been disregarded when it comes to Indigenous Peoples. In 1955, the Supreme Court held in *Tee-Hit-Ton Indians v. United States*¹³⁸ that the taking of “unrecognized” aboriginal title of Indigenous Peoples was not compensable under the Fifth Amendment. Later in *U.S. v. Sioux Nation of Indians*,¹³⁹ the Supreme Court held that a taking of “recognized” title would be compensable, though in that case and others, tribes have refused monetary payment for the loss of sacred lands.

Pursuant to the Indian Reorganization Act, Congress has provided some protections for securing and expanding tribal property held in trust.¹⁴⁰ Tribes continue to seek to protect their lands, both for purposes of jurisdiction and for religious, cultural, and familial reasons. Tribes have pushed for the enforcement of their treaty rights, and, in some recent cases, the Supreme Court has upheld those rights.¹⁴¹

Implementing the Declaration’s Land Rights Articles in Tribal Law

Around the world, Indigenous Peoples have prevailed in a series of cases recognizing their ownland tenure as giving rise to rights of property and equality under national constitutions, and in court decisions, including regional courts such as the Inter-American Court of Human Rights.¹⁴² The federal courts of the United States have not yet followed suit,¹⁴³ but Indigenous Peoples’ codification of their own land tenure systems may be an important factor, as courts in other countries and systems have closely examined Indigenous Peoples’ own laws and customs in these cases. These cases follow the Declaration’s call for actual restitution of lands, and when restitution is not possible, an award of monetary compensation.

This set of norms has the potential to help inform long-standing disputes, as in the case of the Lakota, Dakota, and Nakota peoples’ claims for the Black Hills, and the Western Shoshone cases in Nevada, in which Indigenous Peoples have refused monetary payment for historic land dispossession.¹⁴⁴

An additional point in the United States concerns the relationship between land and jurisdiction, which are mutually constitutive in the lives of Indigenous Peoples.¹⁴⁵ Land and its natural resources may also be a source of development, growth, or economic sustenance for Indigenous Peoples.

Tribal law can define these principles with regard to treaties, land rights, and self-determination in development, especially with the support of the Declaration. Tribes may wish to consider any or all of the following:

- Codify the cultural and economic importance of the land, waters, plants, and animals.

¹³⁸ 348 U.S. 272 (1955).

¹³⁹ 448 U.S. 371 (1980).

¹⁴⁰ See e.g. the Indian Reorganization Act of 1934, 25 U.S.C. § 431, et. seq., Pub. L. 73-383 (halting and even reversing some of the devastating consequences of allotment, including allowing for tribal land acquisition).

¹⁴¹ *McGirt v. Oklahoma*, U.S. No. 18-9526 (July 9, 2020).

¹⁴² *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 79 (2001); *Aurelio Cal v. Belize*, Supreme Court of Belize (Claims No. 171 and 172 of 2007) (Oct. 18, 2007).

¹⁴³ *Dann v. United States*, Case 11.140, Inter-Am. Comm’n H.R., Report No. 75/02, OEA/Ser.L./V/II.117, doc. 5 rev. ¶ 5 (2002) (“[T]he Commission concluded that the State has failed to ensure the Danns’ right to property under conditions of equality contrary to Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.”).

¹⁴⁴ S. James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *The Situation of Indigenous Peoples in the United States of America*, U.N. Doc. A/HRC/21/47/Add. 1 (Aug. 30, 2012) (calling for reconciliation in the case of Indigenous Peoples’ claims to the Black Hills).

¹⁴⁵ Kristen A. Carpenter and Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CALIF. L. REV. 173, 211 (2014).

- In a 2008 case, the **Hawai‘i Supreme Court** approvingly quoted the testimony of respected kumu hula and professor, Pualani Kanaka‘ole Kanahele,

“‘Āina is a living and vital part of the Native Hawaiian cosmology and is irreplaceable. The natural elements – land, air, water, ocean – are interconnected and interdependent. To Native Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. The ‘āina is part of their ‘ohana, and they care for it as they do for other members of their families. For them the land and the natural environment is alive, respected, treasured, praised, and even worshiped.”¹⁴⁶

- Advocate for human responsibilities to the land and other resources.
 - **Protect Kaho‘olawe ‘Ohana** fought a decades long struggle to stop the U.S. Navy from using Kaho‘olawe island as a bombing target, and to return the island to Hawaiian stewardship. In the process, the efforts to restore Kaho‘olawe have revitalized the Makahiki traditions of Lono. Other ‘āina, including Wao Kele o Puna on Hawai‘i Island, once targeted for geothermal development, and Waimea Valley on O‘ahu, have also come under the stewardship of the Hawaiian community.¹⁴⁷
 - **Cultural Survival** submitted an “early warning and urgent action” request to the Committee on the Elimination of Racial Discrimination in 2019.¹⁴⁸ This request came in response to planned development of an Extremely Large Telescope on Mauna Kea, a site of cultural and religious significance designed as Hawaiian Trust Land, in part due to concerns over the project’s environmental impact.¹⁴⁹ CERD noted development should be suspended pending meaningful consultation with and receiving free, prior and informed consent from Native Hawaiians.¹⁵⁰
- Certain tribes have codified not only the rights and responsibilities of Indigenous Peoples to the land and its resources, but also the rights of nature itself.
 - Citing the Declaration, the **Yurok Tribe** enacted a resolution affirming:

“The Yurok Tribe and its members have had a strong relationship with ‘Weroy,’ also known as the Klamath River, since time immemorial and Yurok culture, ceremonies, religion, fisheries, subsistence, economics, residence, and all other lifeways are intertwined with the health of the River...”

It is the inherent sovereign right of the Yurok people and the Tribe and an international legal norm declared under the United Nations Declaration of the Rights of Indigenous Peoples ("UN DRIP"), Article 26(1), to sustainably harvest plants, salmon and other fish, animals, and other life-giving

¹⁴⁶ Office of Hawaiian Affairs v. Hous. and Cmty. Dev. Corp., 121 Hawai‘i 324, 333, 219 P.3d 1111, 1120 (2008) (alterations in original) (citations omitted).

¹⁴⁷ Melody Kapilialoha MacKenzie, “[The U.N. Declaration on the Rights of Indigenous Peoples: Part II—Āina](#),” Ka Huli Ao Center for Excellence in Native Hawaiian Law, William S. Richardson School of Law.

¹⁴⁸ E. Martichenko, [Indigenous Peoples of Hawai‘i Request Urgent Action from Committee on the Elimination of Racial Discrimination](#), Cultural Survival (2019).

¹⁴⁹ [Findings of Fact, Conclusions of Law and Decision and Order at 91–104, In re Petitions Requesting a Contested Case Hearing Re Conservation District Use Permit](#) (CDUP) HA-3568 for the Thirty Meter Telescope, No. HA-11-05 (Haw. BLNR Apr. 12, 2013) (noting impacts to the land “would continue to be substantial, significant, and adverse”).

¹⁵⁰ Committee on the Elimination of Racial Discrimination, [Reference: CERD/EWUAP/98th Session/USA\(Mauna Kea Mountain/JP/ks\)](#), May 10, 2019,

foods and medicines;

It is the inherent sovereign right of the Yurok people and the Tribe and an international legal norm declared under UN DRIP, Article 29, to conserve and protect the Yurok Tribe's current and traditional territory including the Klamath River, its ecosystem, and species; ...

That the Yurok Tribal Council now establishes the Rights of the Klamath River to exist, flourish, and naturally evolve; to have a clean and healthy environment free from pollutants; to have a stable climate free from human- caused climate change impacts; and to be free from contamination by genetically engineered organisms.¹⁵¹

In these ways, tribes are using tribal law to reimagine a governing approach to land that better incorporates tribal values beyond just a property framework. Tribal law has been used to not just reflect the importance of land to tribes, but also tribes' duties to the land.

¹⁵¹ Yurok Tribal Council Resolution, Yurok Tribe Support for the United Nations Declaration on the Rights of Indigenous Peoples, No. 12-24 (Aug. 24, 2012).

Land Rights – Good Practice

The Cherokee Nation Tribal Council adopted the Cherokee Nation Parks and Wildlands, Fishing and Hunting Reserve Act of 2021.¹ Dedicating over 6,100 acres of land as Cherokee Nation hunting and fishing reserves, the legislation allows for the acquisition and management of lands within their reservation for the benefit of all Cherokees. As Chief Hoskin has said “[t]hese lands will be protected in perpetuity as thriving habitats for fish and wildlife, as well as providing hunting, fishing, trapping, wildlife observation and other recreational uses.”

The Act provides for the following:

- Sequoyah Hunting Preserve: Almost 4,400 acres of tribal fee property for hunting, fishing, and traditional outdoor activities, supporting reduction of food insecurity through hunting and fishing.
- Sallisaw Creek Park: Approximately 800 acres of tribal trust land in Sequoyah County, a partially developed public park for hunting, fishing, camping and other recreational purposes, including places where citizens can enjoy time in nature.
- Shawnee Preserve: One hundred fifty-five acres of wilderness land currently for hunting and traditional outdoor activities. “The Cherokee Nation will consult with the Shawnee Tribe concerning the culturally appropriate use of the Shawnee Preserve because of the Shawnees’ historic connection to the area.”
- Medicine Keepers Preserve: Eight hundred two acres of tribal property to be used for traditional and medicinal plant gathering and Cherokee cultural activities, by the Medicine Keepers program, with restricted access to the public.

Chief Hoskin has said the program “is a way to live out our values of responsible conservation of precious wildlands and natural resources. We can also introduce more citizens to Cherokee cultural traditions, including knowledge about and uses of wild medicinal plants. Deer, squirrel, rabbit, turkey, dove, quail, waterfowl and fish are abundant in the reserve lands, along with mushrooms, wild onions, wild berries, hickory nuts, wild greens and more.”

While this Act does not cite the Declaration, it expresses many of its norms and values. The Act highlights the connection between the Cherokee people, their lands, culture, medicines, and natural resources. By explicitly providing for consultation with the Shawnee Tribe, the Act also models the importance of exercising tribal land rights in relationship with others through consultation and cooperation.

¹. Cherokee Nation Newsletter, Jan. 15, 2021. For more information, [Cherokee Nation establishes hunting, fishing reserves](#), Jan. 15, 2021.

Land Rights – Good Practice

The White Earth Band of Chippewa Indians recognizes wild rice, Manoomin, as having rights of nature. In a Resolution the Tribe states, in part:

Section 1. Statements of Law – Rights.

- (a) Rights of Manoomin. Manoomin, or wild rice, within the White Earth Reservation possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. These rights include, but are not limited to, the right to pure water and freshwater habitat; the right to a healthy climate system and a natural environment free from human-caused global warming impacts and emissions; the right to be free from patenting; as well as rights to be free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.
- (b) Rights of Tribal Members. Tribal members of White Earth Band possess the right to harvest manoomin, and protect and save manoomin seeds, within the White Earth Reservation. This right shall include, but is not limited to, the right to manoomin that is free from patenting, as well as free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.
- (c) Right of Sovereignty. The White Earth Band and its members possess both a collective and individual right of sovereignty, self-determination, and self-government, which shall not be infringed by other governments or business entities claiming the right to override that right. This shall include the right to enforce this law free of interference from corporations, other business entities, governments, or other public or private entities. That right shall include the right of tribal members to be free from ceiling preemption, because this law expands rights-protections for people and manoomin above those provided by less-protective state, federal, or international law.
- (d) Rights as Self-Executing. All rights secured by this law are inherent, fundamental, and unalienable, and shall be enforceable against both private and public actors without further implementing legislation.

Section 2. Statements of Law – Prohibitions Necessary to Secure Rights.

- (a) It shall be unlawful for any business entity or government, or any other public or private entity, to engage in activities which violate, or which are likely to violate, the rights or prohibitions of this law, regardless of whether those activities occur within, or outside of, the White Earth Reservation
- (b) No government shall recognize as valid any permit, license, privilege, charter, or other authorization issued to any business entity or government, or any other public or private entity, that would enable that entity to violate the rights or prohibitions of this law, regardless of whether the authorized activities occur within, or outside of, the White Earth Reservation.

White Earth Band of Chippewa Indians, Resolution no. 001-19-009, Rights of Manoomin, Dec. 31, 2018.

Conclusion

The Declaration calls for the world community, including tribal governments and Native Nations, to uplift and uphold Indigenous Peoples' rights. Tribes have a unique opportunity to explore and adopt modalities for implementing the Declaration internally, and importantly, to undertake advocacy efforts to push for its implementation within federal, state, and local governments. It is our hope that this Toolkit will be a useful resource for Indigenous Peoples to help realize the promises of the Declaration.

Appendix I. NCAI 2017 Resolution



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MKE-17-049

TITLE: Acknowledging the 10th Anniversary of the Passage of the UN Declaration on the Rights of Indigenous Peoples

EXECUTIVE COMMITTEE

PRESIDENT

Jefferson Keel
Ojibwa Nation

FIRST VICE-PRESIDENT

Aaron Payment
Sault Ste. Marie Tribe of Chippewa
Indians of Michigan

RECORDING SECRETARY

Janis Majel Dixon
Pawnee Band of Mission Indians

TREASURER

W. Ron Allen
Jamestown S'Klallan Tribe

REGIONAL VICE- PRESIDENTS

ALASKA

Ruth Sanderson, Jr.
Tlingit & Haida Indian Tribes of
Alaska

EASTERN OKLAHOMA

Joe Byrd
Chester Nation

GREAT PLAINS

Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST

Roger Kester
Potawatomi Band of Potawatomi

NORTHEAST

Laura Tomlin
Shawnee Indian Nation

NORTHWEST

Leonard Foreman
Squamish Tribe

PACIFIC

Wino Gerardo
Tule River Tribe of California

ROCKY MOUNTAIN

Darin Old Coyote
Crow Nation

SOUTHEAST

Nancy Carvery
Mv-Okla Lower Creek Indians

SOUTHERN PLAINS

Zach Palmahonda
Pawnee Band of Potawatomi Nation

SOUTHWEST

Joe Garcia
Ojibay-Daigwan Pueblo

WESTERN

Franklin Pablos, Jr.
Gila River Indian Community

EXECUTIVE DIRECTOR

Jacqueline Pata
Tlingit

NCAI HEADQUARTERS

1518 P Street, N.W.
Washington, DC 20005
202.462.7707
202.462.7707 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the United Nations ratified the Declaration on the Rights of Indigenous Peoples (UNDRIP) ten years ago on September 13, 2007; and

WHEREAS, the National Congress of American Indians (NCAI) has been actively involved in the drafting and implementation process of UNDRIP since at least 1999; and

WHEREAS, the UNDRIP is an historic statement of rights intended to guard against the genocide, the theft of lands and resources, the discrimination, and the political exclusion that Indian nations and many other indigenous peoples have suffered – and too often continue to suffer today; and

WHEREAS, the National Congress of American Indians (NCAI) believes that implementation of the UNDRIP both by the United Nations as well as by the government of the United States is critical for protecting and furthering the rights of indigenous peoples both domestically and internationally; and

WHEREAS, ten years after the adoption of UNDRIP indigenous rights are still regularly violated, with indigenous peoples in all regions continuing to face atrocities that violate their individual and collective rights; and

WHEREAS, the UNDRIP will not achieve its purposes without concrete actions on the part of the UN including lasting, effective institutions to monitor and encourage compliance with and implementation of the rights in the Declaration; and

WHEREAS, as former UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya has said, "implementation of the Declaration should be regarded as a political, moral and, yes, legal imperative without qualification."

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) congratulates those Indigenous governments and peoples and UN member states who have worked together over the past decade to lay the ground work for full implementation of UNDRIP; and


BE IT FURTHER RESOLVED, that the NCAI calls upon UN member states to redouble their commitment to ensuring that best intentions to implement UNDRIP result in best practices and meaningful reforms to uphold the rights of indigenous peoples enshrined in UNDRIP; and

BE IT FURTHER RESOLVED, that NCAI affirms and recognizes the critical role held by indigenous constitutional and customary tribal governments, as the direct and accountable representatives to constituencies of indigenous peoples and tribes of the United States, in the implementation of the UNDRIP by the United Nations, as well as within the federal and state governments of the United States of America; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2017 Annual Session of the National Congress of American Indians, held at the Wisconsin Center in Milwaukee, WI, Oct 15, 2017 - Oct 20, 2017, with a quorum present.


Jefferson Keel, President

ATTEST:


Juana Najel Dixon, Recording Secretary

Appendix II. NCAI 2020 Resolution



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-20-056

Executive Committee

PRESIDENT

Terri R. Sharp
Council on the Margin

1st VICE PRESIDENT

Jason Payment
East. Co. Maricopa Tribe of Chicanos
Indians

RECORDING SECRETARY

James Maje-Dizon
Dasma River of U.S. Native Indians

TREASURER

Sharon Halsey
George-Washburn State of
Oregon Indians

REGIONAL VICE PRESIDENTS

ALASKA

Bob Goodenow, Jr.
1922 E. Third Street, Prudhoe Bay
Alaska

EASTERN OREGONIAN

Norman Robinson
Wapinitia, WA

GREAT PLAINS

Larry Wright, Jr.
Box 1000, Ft. Collins, CO

HIGHEST

Katherine Crocker-Gibson
Dallager-Malvern-Stein
Community

NORTHEAST

Tim Adams
Census Station of Indians

NORTHWEST

Lee and Patricia
Dunsmuir, WA

PACIFIC

Erica New Mexico
Cultural Center of Indians

ROCKY MOUNTAIN

Mark DeLoach
Burlington, VT

SOUTHEAST

Malay Center
6700 S. Greenway, Ft. Lauderdale, FL

SOUTHERN PLAINS

Robert Tippencott
Colorado, CO

SOUTHWEST

Vernon

WESTERN

Vernon

CHIEF EXECUTIVE OFFICER

KEVIN ANN
1000 COLUMBIAN AVENUE
COMBUST

NCAI HEADQUARTERS

1515 P Street, N.W.
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202.462.7701
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www.ncai.org

TITLE: Calling on the United States and Tribal Nations to take action to support Implementation of the UN Declaration on the Rights of Indigenous Peoples

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, NCAI was actively involved in the drafting and implementation process of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) since 1999; and

WHEREAS, the United Nations General Assembly adopted the Declaration on September 13, 2007 and the U.S. formally endorsed the Declaration in 2010; and

WHEREAS, the Declaration is an historic statement of rights intended to guard against the genocide, the theft of lands and resources, the discrimination, and the political exclusion that tribal nations and many other Indigenous Peoples have suffered – and too often continue to suffer today; and

WHEREAS, the Declaration contains the “minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world”; and

WHEREAS, NCAI believes that implementation of the Declaration by the United Nations, the government of the United States, individual states, and other governments is critical for protecting and furthering the rights of Indigenous Peoples both domestically and internationally; and

WHEREAS, years after the adoption of the Declaration, Indigenous rights are still regularly violated, with Indigenous Peoples in all regions continuing to face atrocities that violate their individual and collective rights; and

WHEREAS, members of NCAI, as Indigenous Nations and individuals, will benefit vastly if the principles of the Declaration are implemented by the United States, the individual states, and other governments; and

WHEREAS, much work remains to be done to implement the Declaration; and

WHEREAS, Indigenous Peoples have the opportunity to set an example for nations, states, and other governments regarding the importance of implementing the Declaration; and

WHEREAS, some Tribal Governments and Native Nations have already begun to set such an example by adopting Resolutions stating various types of support for the Declaration;

NOW THEREFORE BE IT RESOLVED, that NCAI hereby reaffirms its endorsement of the Declaration, and commits to undertaking efforts to encourage implementation of the Declaration through awareness-building and advocacy activities; and

BE IT FURTHER RESOLVED, that NCAI calls on the President of the United States to issue an Executive Order creating a Commission on Implementation of the Declaration on the Rights of Indigenous Peoples that would include federal, tribal, and other experts who would be charged with developing a national action plan to implement the Declaration; and

BE IT FURTHER RESOLVED, that NCAI calls on the President to appoint an Ambassador on Indigenous Affairs to:

- Serve as head of mission and coordinate all U.S. representation in international engagements regarding Indigenous affairs, at the UN, the Organization of American States, and in bilateral and multilateral diplomacy with other national governments;
- Assist in providing tribal nations and others with information about global processes and opportunities to participate at the UN and other international forums;
- Consult with tribal nations consistent with the principles set forth in the Declaration regarding Free, Prior, and Informed Consent, and coordinate with federal departments and agencies regarding positions on Indigenous affairs that the U.S. presents to the UN General Assembly, Human Rights Council, Treaty Bodies (Human Rights Committee, Committee to Eliminate Racial Discrimination), the World Intellectual Property Organization, the UN Educational, Scientific and Cultural Organization, and other bodies; and
- Address Indigenous Peoples' rights to international repatriation of human remains, ceremonial objects, and cultural heritage, through direct negotiation and development of new processes as outlined in the [EMRIP Report on Repatriation \(2020\)](#); and

BE IT FURTHER RESOLVED, that NCAI encourages tribal nations and other Indigenous Peoples to consider reviewing the Declaration with a view to identifying possible localized versions of those Articles of the Declaration that may be appropriate to utilize in tribal law depending on the specific circumstances and needs of individual tribal nations; and

BE IT FURTHER RESOLVED, that NCAI will partner with the Native American Rights Fund and the University of Colorado Law School to disseminate information developed by their Joint Project to Implement the Declaration in the United States, including materials produced in partnership with the UCLA School of Law, which will also be made available on the Joint Project website: <https://un-declaration.narf.org>; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2020 Annual Session of the National Congress of American Indians, held Nov 8, 2020 - Nov 13, 2020, with a quorum present.



Eawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary

Appendix III. British Columbia Bill 49 – Implementing the Declaration

Bill 49 – 2019 Declaration on the Rights of Indigenous Peoples Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation

1. (1) In this Act:

"Declaration" means the United Nations Declaration on the Rights of Indigenous Peoples set out in the Schedule;

"Indigenous governing body" means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act, 1982;

"Indigenous peoples" has the same meaning as aboriginal peoples in section 35 of the Constitution Act, 1982;

"statutory power of decision" has the same meaning as in the Judicial Review Procedure Act.

(2) For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.

(3) For certainty, nothing in this Act, nor anything done under this Act, abrogates or derogates from the rights recognized and affirmed by section 35 of the Constitution Act, 1982.

(4) Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.

Purposes of Act

2. The purposes of this Act are as follows:

(a) to affirm the application of the Declaration to the laws of British Columbia;

(b) to contribute to the implementation of the Declaration

(c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.

Measures to align laws with Declaration

3. In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take

all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

Action plan

4.

- (1) The government must prepare and implement an action plan to achieve the objectives of the Declaration.
- (2) The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia.
- (3) The action plan must contain the date on or before which the government must initiate a review of the action plan.
- (4) After the action plan is prepared, the minister must, as soon as practicable,
 - (a) lay the action plan before the Legislative Assembly if the Legislative Assembly is then sitting, or
 - (b) file the action plan with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting.
- (5) The government may prepare a new action plan in accordance with this section.

Annual report

5.

- (1) Each year the minister must prepare a report for the 12-month period ending on March 31.
- (2) The report must be prepared in consultation and cooperation with the Indigenous peoples in British Columbia.
- (3) In the report under subsection (1), the minister must report on the progress that has been made towards implementing the measures referred to in section 3 and achieving the goals in the action plan.
- (4) On or before June 30 in each year, the minister must
 - (a) lay the report prepared for the 12-month period ending on March 31 in that year before the Legislative Assembly, if the Legislative Assembly is then sitting, or
 - (b) file the report prepared for the 12-month period ending on March 31 in that year with the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting.

Agreements

6.

- (1) For the purposes of this Act, a member of the Executive Council, on behalf of the government, may enter into an agreement with an Indigenous governing body.
- (2) Subsection (1)
 - a. is subject to section 7, and
 - b. does not limit a power of the member to enter into an agreement under any other enactment.

Decision-making agreements

7.

(1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to one or both of the following:

- a. the exercise of a statutory power of decision jointly by
 - i. the Indigenous governing body, and
 - ii. the government or another decision-maker;
- b. the consent of the Indigenous governing body before the exercise of a statutory power of decision.

(2) A member authorized under subsection (1) to negotiate an agreement may enter into the agreement without further authorization from the Lieutenant Governor in Council unless the Lieutenant Governor in Council restricts the initial authorization to only the negotiation of the agreement.

(3) Within 15 days after the Lieutenant Governor in Council authorizes the member to negotiate an agreement under subsection (1), the member must make public a summary of the local governments and other persons the member intends to consult before or during the negotiation.

(4) An agreement entered into under subsection (1)

- (a) must be published in the Gazette, and
- (b) is not effective until the agreement is published in the Gazette or a later date specified in the agreement.

(5) For certainty, subsection (4) applies to an agreement that amends an agreement entered into under subsection (1).

Offence Act

8. Section 5 of the Offence Act does not apply to this Act.

Power to make regulations

9. The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

Commencement

10. This Act comes into force on the date of Royal Assent.

Appendix IV.

Sample Endorsement of the Declaration

A Resolution Authorizing the [Tribe/Nation] to Encourage the Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

WHEREAS, Indigenous Peoples participated in the drafting and negotiation of the United Nations Declaration on the Rights of Indigenous Peoples (Declaration), to affirm their rights and responsibilities among the peoples of the world;

WHEREAS, the Declaration recognizes individual and collective rights of Indigenous Peoples in the realms of self-determination and Indigenous institutions; equality, life, integrity and security; culture; education, language and public media; participation in decision making with free, prior and informed consent; economic and social rights; rights to land, territories, and resources; rights embodied in treaties and agreements; among others;

WHEREAS, the Declaration recognizes the laws, customs, and traditions of Indigenous Peoples;

WHEREAS, the Declaration was adopted by the U.N. General Assembly in 2007, and has been endorsed by 150 countries, including the United States;

WHEREAS, **Tribal Governments and Native Nations** are already using the Declaration as a tool to protect their lands and resources, as it forms a framework for how federal and state laws, regulations, policies, and practices should recognize and respect the workings of Native governments;

WHEREAS, the [Tribe/Nation], among many other tribal governments and Native Nations, affirms and exercises the right of self-determination in our day-to-day self-governance;

WHEREAS, the full recognition and effective implementation of the rights affirmed in the Declaration will enhance harmonious and cooperative relations between the [Tribe/Nation], local and state governments, the United States government, and the United Nations; and,

WHEREAS, Indigenous Peoples are entitled to a regular and permanent status in the United Nations that allows full and effective participation in all relevant U.N. activities;

BE IT RESOLVED BY THE [TRIBE/NATION], that the Tribal Council hereby recognizes and affirms the Declaration as a minimum expression of the Indigenous rights of the [Tribe/Nation]; and

BE IT FURTHER RESOLVED, that the [Tribe/Nation] encourages the United Nations, the United States government, and state and local governments to implement the preamble, articles, and principles of the Declaration.

Appendix V. Sample Wholesale Implementation Act

Before adopting the Declaration as tribal law, a thorough analysis should be undertaken by the Tribe's governing authorities, with the assistance of legal counsel and other Tribe experts such as elders, as to the effect such adoption would have on the Tribe's existing laws and rights, customary practices, and relations with other tribes.

[Preamble]

WHEREAS, Indigenous Peoples participated in the drafting and negotiation of the United Nations Declaration on the Rights of Indigenous Peoples (Declaration), to affirm their rights and responsibilities among the peoples of the world;

WHEREAS, the Declaration recognizes individual and collective rights of Indigenous Peoples in the realms of self-determination and Indigenous institutions; equality, life, integrity and security; culture; education, language and public media; participation in decision making with free, prior and informed consent; economic and social rights; rights to land, territories, and resources; rights embodied in treaties and agreements; among others;

WHEREAS, the Declaration recognizes the laws, customs, and traditions of Indigenous Peoples;

WHEREAS, the Declaration was adopted by the United Nations General Assembly on September 13, 2007, and has been endorsed by 150 countries, including the United States;

WHEREAS, Tribal Governments and Native Nations are already using the Declaration as a tool to protect their lands and resources, as it forms a framework for how federal and state laws, regulations, policies, and practices should recognize and respect the workings of Native governments;

WHEREAS, the full recognition and effective implementation of the rights affirmed in the Declaration will enhance harmonious and cooperative relations between the [Tribe/Nation], local and state governments, the United States government, and the United Nations; and,

WHEREAS, the [Tribe/Nation] commits to implementing the Declaration as a means of advancing the wellbeing of the [___] people, in relationship with the natural world and all peoples;

[Operative provisions]

Sec 1. The [Tribe/Nation] adopts the United Nations Declaration on the Rights of Indigenous Peoples, as contained in the annex to the present ordinance, as tribal law.

Sec 2. The purposes of this Act are as follows:

- (a) to adopt the Declaration as law in **the [Tribe/Nation]**;
- (b) to contribute to the implementation of the Declaration, in furtherance of the wellbeing of Indigenous Peoples;
- (c) to develop relationships of trust and mutual agreement between Indigenous governing bodies and state and federal agencies.

Sec 3. Adopt the Declaration as Tribal Law

Henceforth, the Declaration in its entirety is adopted as binding tribal law.

Sec 4. Make Tribal Laws Consistent with the Declaration

The Tribal Government shall take all measures necessary to ensure that the laws of the Tribe are consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

Sec 5. Action Plan

The Tribal Government shall develop and implement an Action Plan to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

Sec 6. Annual Report

The [Attorney General/Other Named Official] of the Tribe shall prepare and submit a report to the Tribal Council for the 12-month period ending on December 31, regarding progress made towards ensuring the laws of the Tribe are consistent with the Declaration and towards achieving the goals in the Action Plan.

Sec 7. Call to Our State Partners

In consultation and cooperation with the Indigenous Peoples in [State where Tribe is located], the [Tribe] calls on State government to take all measures necessary to ensure the laws of [State where Tribe is located] are consistent with the Declaration.

Sec 8. Call to Our Federal Partners

The [Tribe] also calls on the federal government and all federal agencies that deal with the Tribe to recognize the rights of the Tribe and its citizens as laid out in the Declaration in the conduct of our government-to-government relations, including Free, Prior and Informed Consent. We further call upon Congress to pass legislation aligning its laws with the Declaration.

Sec 9. Savings Clause

Nothing in this Ordinance, nor any action undertaken pursuant to this Ordinance, abrogates or derogates from the Tribe's inherent rights or other rights recognized as a matter of tribal, state, federal, or international law.

Appendix VI.

The Declaration

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006,¹⁵² by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary
meeting 13
September 2007*

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly, Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national

origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories

¹⁵² See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

and resources,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,¹⁵³ as well as the Vienna Declaration and Programme of Action,¹⁵⁴ affirm the fundamental

importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, and respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing

¹⁵³ See resolution 2200 A (XXI), annex.

¹⁵⁴ A/CONF.157/24 (Part I), chap. III

role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to

be pursued in a spirit of

partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights¹⁵⁵ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters

relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

¹⁵⁵ Resolution 217 A (III).

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which

has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed

from their lands or territories. No relocation shall take place without their free, prior and informed

consent of the indigenous

peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach

their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have

access in privacy to their

religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to their repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of

interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the

indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any

work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the

right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

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.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or

otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous

peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.

They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental

economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have

the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to

achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring

participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The right recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or

person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.