

*Expert Seminar in Support of the Work of the
UN Expert Mechanism on the Rights of Indigenous Peoples
Establishing effective monitoring mechanisms at the national and regional levels for the implementation of the
UN Declaration on the Rights of Indigenous Peoples*



THE UNIVERSITY OF BRITISH COLUMBIA



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Speaker	Kristen Carpenter
Panel	Panel 4: Legal and academia
Time	9.00 – 10.35
Date	Friday 24 February 2023
Location	<i>(Remote via Zoom)</i> Robert H. Lee Alumni Centre University of British Columbia 6163 University Blvd Vancouver, BC

THE **IMPLEMENTATION** PROJECT

Implementing (and Monitoring) the UN Declaration on the Rights of Indigenous Peoples in the U.S.

Presented by

Kristen Carpenter

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Co-Director, The Implementation Project

Former Member and Chair, UN EMRIP

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Advancing education and advocacy regarding the UN Declaration on the Rights of Indigenous Peoples



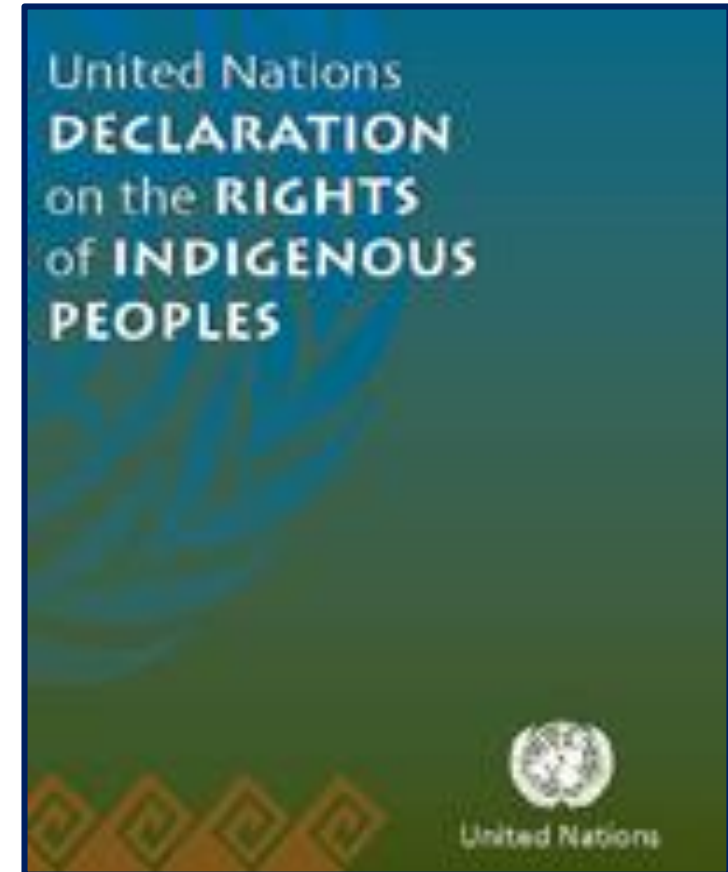
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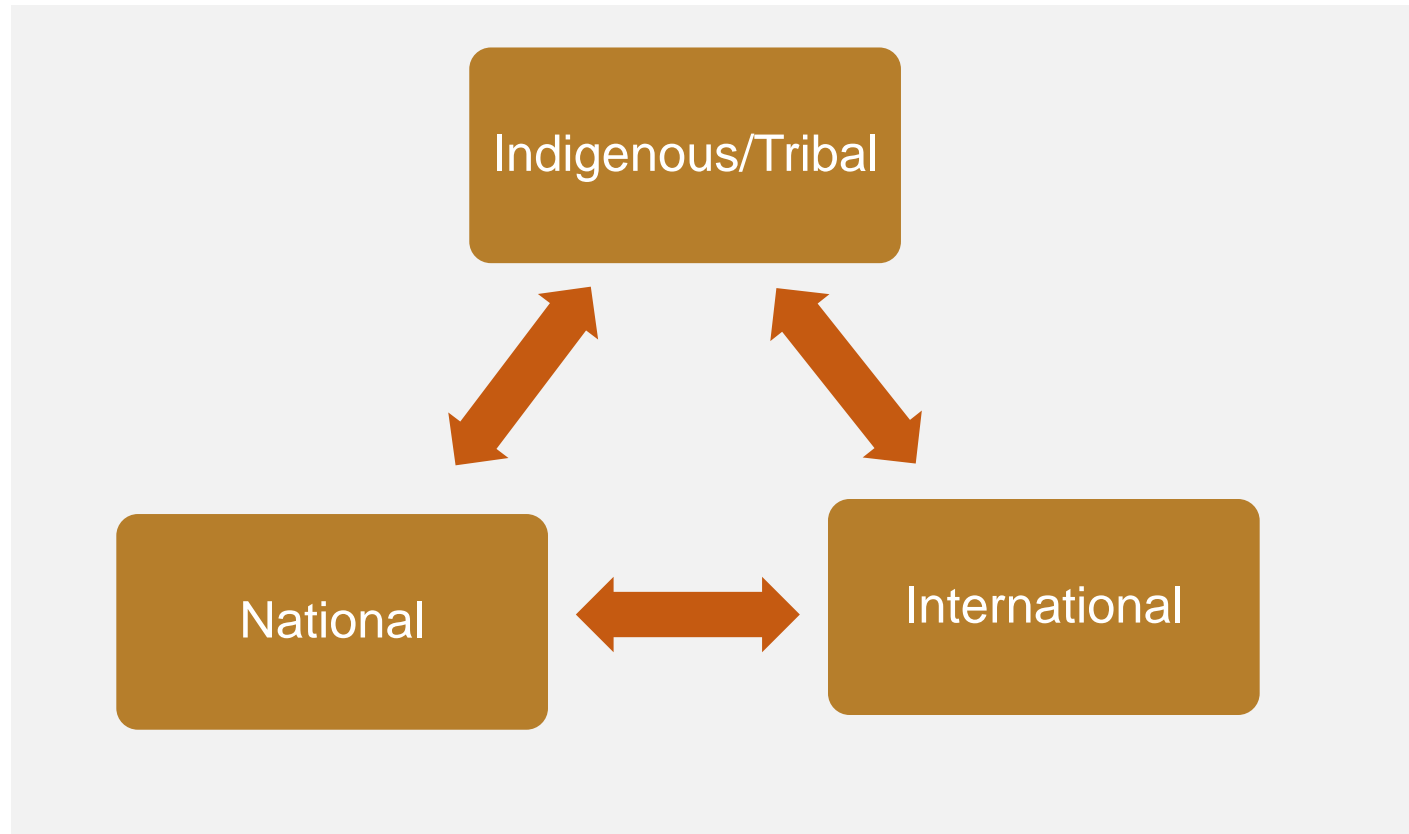
For more information visit The Implementation Project @ <https://un-declaration.narf.org/>

The UN Declaration on the Rights of Indigenous Peoples (2007)

- A “resolution” of the General Assembly adopted by vote as contrasted with a “treaty”, adopted by agreement and ratified by home countries
- Offers an authoritative expression of a global consensus on minimum standards for universal human rights in the Indigenous Peoples’ context
- U.S. expressed support for the Declaration in 2010. UNITED STATES STATE DEPARTMENT, ANNOUNCEMENT OF U.S. SUPPORT (2011)



“Multiple site” model for implementing and monitoring the Declaration



Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Indigenous Human Rights* (2014).

The Declaration is becoming the law of the land



Muscogee (Creek) Nation
translates and adopts
the “MDRIP”
by tribal resolution
2016



Mexico City
adopts the Declaration
by Constitution
2017



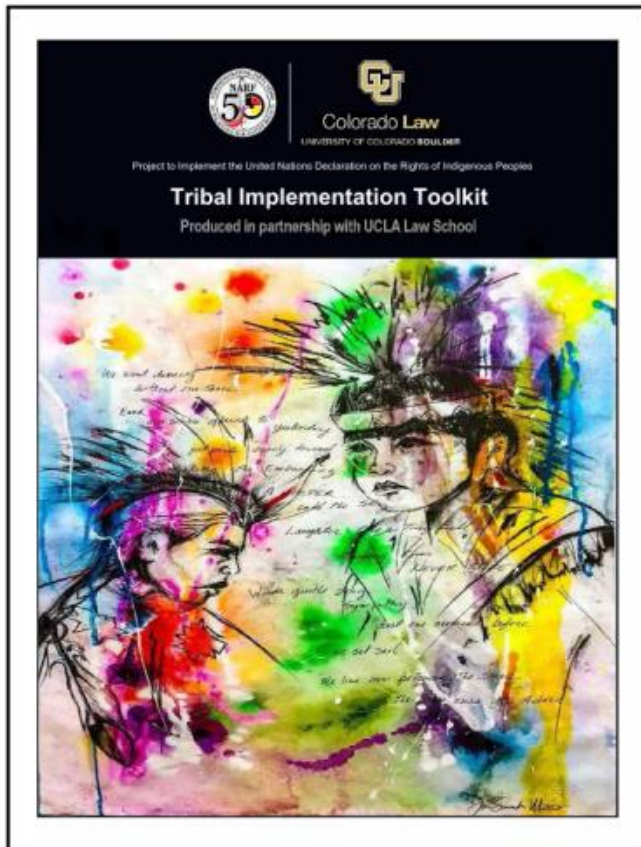
Canada adopts legislation to
bring federal law into alignment
with the Declaration
2021



Indigenous/Tribal Measures to Implement the Declaration in the U.S.

The Tribal Implementation Toolkit

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Features

Overview of the Declaration

Tribal success stories

Sample legislation

Resources

Available free of charge here!

<https://un-declaration.narf.org/wp-content/uploads/Tribal-Implementation-Toolkit-Digital-Edition.pdf>

Muscogee Creek Nation – translates and adopts the Declaration as tribal law (2016)

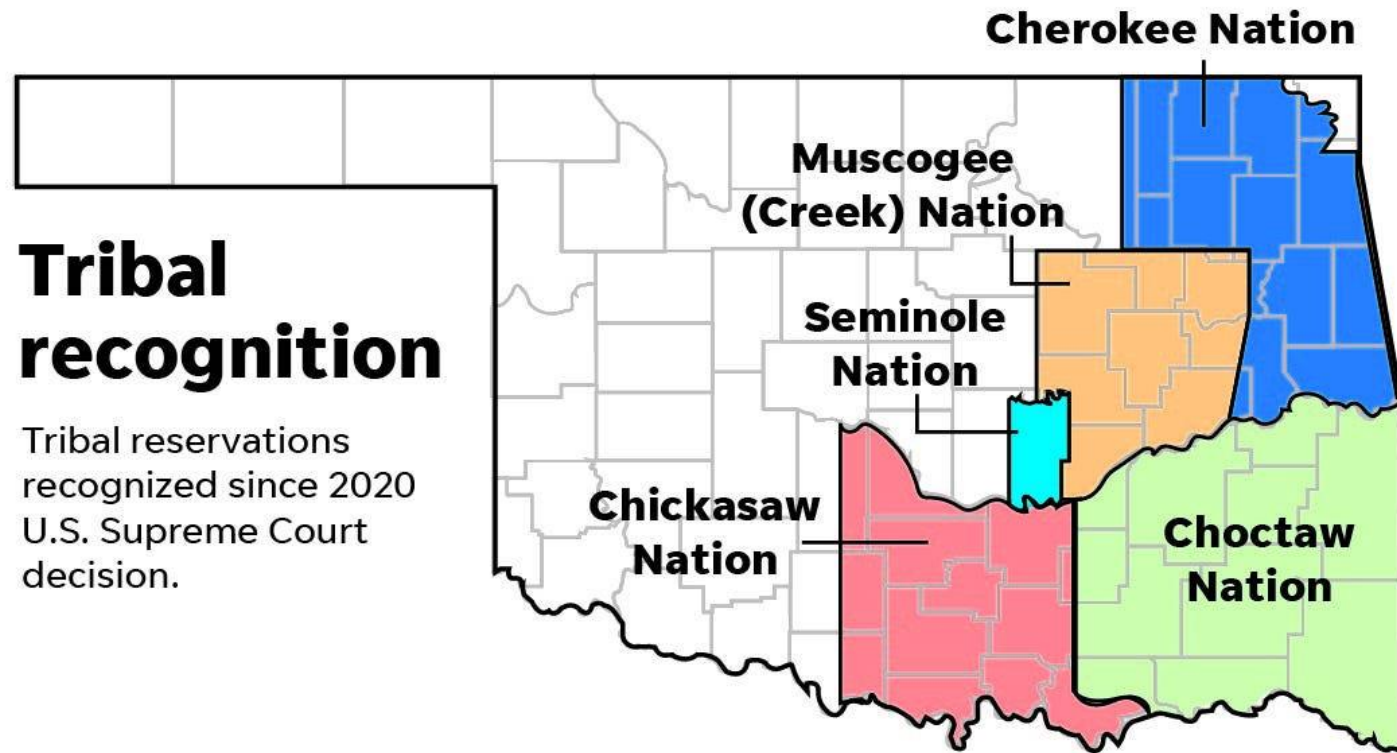


The signing of TR 2016-149 (2016)

“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.”

Tribal courts have jurisdiction over significant territories – to the extent tribes (like MCN) have adopted the Declaration, their courts can monitor implementation of Indigenous rights



Tribal resolutions endorsing the Declaration



Gila River Indian Community Council Approves Resolution Which Ratifies the UN Declarations on the Rights of Indigenous Peoples

GILA RIVER INDIAN COMMUNITY, ARIZONA -- On Wednesday May 2, 2008 the Gila River Indian Community Council approved Resolution GR-126-08 which ratifies the United Nations Declarations on the Rights of Indigenous Peoples. This hallmark move of commitment and solidarity with Indigenous Peoples worldwide makes the Gila River Indian Community the first federally recognized tribal nation within the United States to embrace, support and ratify the United Nations Declarations on the Rights of Indigenous Peoples.

Pawnee Nation (2022)

Pawnee Nation Declaration on the Rights of Indigenous Peoples Act

1. It shall be the policy of the Pawnee Nation of Oklahoma to ensure that future Tribal statutes, rules, regulations, and policies are consistent with the UNDRIP standards.
2. The Pawnee Nation's Governing Documents Committee shall conduct a one-year evaluation of existing Tribal statutes, rules, regulations, and policies in consultation with the Attorney General to determine whether appropriate changes are necessary to align Tribal law and policy with the standards of the UNDRIP.
3. The Pawnee Nation calls upon the United States and State of Oklahoma to implement the UNDRIP provisions into their laws and policies.
4. The Pawnee Nation requests the President of the United States to develop a national plan to implement the UNDRIP in partnership and consultation with Tribal Nations, Alaska Natives, and Native Hawaiians.

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Navajo Nation Human Rights Commission (2006-present)



“The Commission was established to collect data regarding discriminatory acts against citizens of the Navajo Nation by private citizens, businesses, organizations and foreign governments within and outside the Navajo Nation.”

NNHRC draws cites sources of law including the Declaration and Navajo law, particularly the Diné principles of *Sa’a Naaghai Bik’e Hozhoo*, *Hashkéejí*, *Hózhóójí* and *K’é*: “being resilient, content, disciplined and maintaining peaceful relationships with all creation

Self Determination, NAVAJO NATION HUMAN RIGHTS COMMISSION, <http://www.nnhrc.navajo-nsn.gov/selfDetermination.html>; *See Water Rights RESOLUTION OF THE NAVAJO NATION HUMAN RIGHTS COMMISSION* (May 18, 2012), <http://www.nnhrc.navajo-nsn.gov/docs/NewsRptResolution/Resolutions/NNHRCMAY-18-12.pdf> ; *Sacred Sites*, NAVAJO NATION HUMAN RIGHTS COMM’N, ASSESSING RACE RELATIONS BETWEEN NAVAJOS AND NON-NAVAJOS 2008–2009

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Non-discrimination: Ho-Chunk Tribal Code, Tit 7, Sec. 4 (2015)



... formally adopts the following rights and measures as outlined [in] the United Nations Declaration on the Rights of Indigenous Peoples which include:

Ho-Chunk Language. 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. (Declaration Arts 13 and 14)

AND

“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. (ICCPR Art 27)

Natural Resources: Yurok Tribal Resolution 19-40 (2019)



It is the inherent sovereign right of the Yurok people and the Tribe and an international legal norm declared under the [Declaration], **Article 26(1)**, to **sustainably harvest** plants, salmon and other fish, animals, and other life-giving foods and medicines;

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

Free, Prior, and Informed Consent – Washington Tribes



Landmark agreement with Washington State
Attorney General (2019)

“The AGO will receive **free, prior and informed consent** prior to taking certain [specified] actions . . . that directly and tangibly affect Tribes, rights or tribal lands”

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).



National Measures to Implement the Declaration in the U.S.

NCAI Resolutions (2020 & 2021)

Calling on the President to:

- (1) Develop a National Action Plan for achieving the ends of the UN Declaration on the Rights of Indigenous Peoples
- (2) Appoint an Ambassador (or Special Envoy) for Global Indigenous Affairs to serve as head of mission and coordinate all international Indigenous Affairs engagements by the United States
- (3) Support the full and effective participation of Indigenous Peoples, through their own Tribal Nations, in all United Nations bodies,

[PDX 20-056](#) (2020) and [SAC 21-023](#) (2021)



Inter-Tribal Council of the Five Civilized Tribes Resolution (2021 and 2022)

Calling on the President to

- (1) Develop a National Action Plan for achieving the ends of the UN Declaration on the Rights of Indigenous Peoples
- (2) Appoint an Ambassador (or Special Envoy) for Global Indigenous Affairs to serve as head of mission and coordinate all international Indigenous Affairs engagements by the United States
- (3) Support the full and effective participation of Indigenous Peoples, through their own representative institutions, in all United Nations bodies
- (4) Support the International Decade of Indigenous Languages



[ITC Resolution 21-32](#) (2021) and [Resolution 22-06](#) (2022)

White House and Federal Departments & Agencies



Departments & Agencies with internal policy on Declaration

- State Department
- Environmental Protection Agency
- Advisory Council on Historic Preservation

For more information visit The Implementation Project @ <https://un-declaration.narf.org/>

Federal Courts

Pueblo de Jemez v. United States, 350 F.Supp.3d 1052, 1094 n. 15, 1103 n. 28 (D. N.M. 2018) (citing the Declaration in analysis of tribe's aboriginal title claim).



U.S. Congress – nothing yet!

Consider implementation legislation on UNDRIP Act in Canada?

- Bring federal Indian law into alignment with the Declaration
- Develop a national action plan
- Appoint a commission to study and make recommendations



International Measures to
Implement the Declaration
in the U.S.

Addressing international bodies



Chief Deskaheh (Caygua) League of Nations 1920



Cherokee Nation Chief Hoskin at UN General Assembly 2019

Indigenous Peoples' Participation at the United Nations



Increasingly tribal leaders attend sessions of international Indigenous Peoples mechanisms, participate in negotiations, submit information to studies, influence and then use UN materials in domestic advocacy



Shawnee Chief Ben Barnes at UN Permanent Forum, NYC, Session April 2022. The Shawnee Tribe has declared an International Decade of the Shawnee Language in conjunction with the UN Decade of Indigenous Languages.

Success story!! Yaqui Peoples' request to EMRIP to assist in repatriation from Sweden under Declaration Arts 11 & 12 (2018-2022)



Former EMRIP Chair Kristen Carpenter with Yaqui leaders and International Indian Treaty Council (2019)

EMRIP Technical Advice Note references the laws, customs, traditions of Yaqui people re Maaso Kova
<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Session12/MaasoKova.pdf>

“Sweden’s Statement Acknowledging Repatriation under the Declaration to the Yaqui People” July 7, 2022
https://www.swedenabroad.se/en/embassies/un-geneva/current/statements/EMRIP_Sweden/

New York Times Coverage
<https://www.nytimes.com/2022/06/18/world/americas/indigenous-artifacts-sweden-museum.html>

Addressing Climate Change and Intellectual Property

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Asst Secretary for Indian Affairs Bryan Newland, NCAI President Fawn Sharp, and Secretary of the Interior Debra Haaland at the UN Framework Convention on Climate Change, Convention of the Parties



NARF attorney Sue Noe in negotiations at the World Intellectual Property Organization (WIPO) regarding Traditional Knowledge, Genetic Resources, and Cultural Expressions

Wado. Mahalo. Thank you. Merci. Gracias.



A JOINT INITIATIVE OF:



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