

**SETTING THE STANDARD: DOMESTIC POLICY
IMPLICATIONS OF THE UN DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JUNE 9, 2011

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**SETTING THE STANDARD: DOMESTIC POLICY
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ON THE RIGHTS OF INDIGENOUS PEOPLES**

THURSDAY, JUNE 9, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. AKAKA,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good morning. It is a beautiful day, and thank you for all the smiles.

I call this hearing of the Committee on Indian Affairs to order.

Aloha, and thank you all for being here with us today. Today's hearing is entitled Setting the Standards: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples. Before I begin, I want to draw attention to the video that was playing as you were here, and I was coming here from a vote on the Floor for this hearing. It is called, and I am sure you don't know it, you guessed, it was called Smiling Indians, and it was produced by one of our witnesses, Mr. Red Corn, in response to the more commonly known photos of Indians from the turn of the last century. As native peoples, it is important for us to tell our own stories from our own perspective, especially when common perceptions are not accurate ones.

More than two million Americans are indigenous peoples in this Country, members of native nations recognized and also those unrecognized. I have long been a proponent of the United States setting a high standard where indigenous rights are concerned and holding ourselves and the world accountable.

It is *kuiliana*, our responsibility on this Committee to look at whether additional implementing legislation is needed to give true meaning to our support for the Declaration. That is our purpose here today, and I am so glad to see all of you here and sorry about those who have to stand. But at least, there are no empty chairs.

The declaration affirms that indigenous peoples enjoy all the human rights and the fundamental freedoms recognized under the UN charter, the Universal Declaration of Human Rights and the international law. While I believe we must be a leader in the rights

of indigenous peoples across the globe, that leadership, that leadership must start here at home.

I want to extend a special mahalo, thank you, to all of those who have traveled far to join us today. Vice Chair Barrasso from Wyoming is my partner on this Committee, and I am happy that we are able to work together on the important work that we do here. I want you to know that for me, he is a gentleman and a good friend. And Vice Chair Barrasso and I have worked together and will continue to do that and try to advance the concerns and to help our indigenous peoples of our Country.

We have assembled a diverse group of witnesses to give wide representation to the views on the UN Declaration and what the United States can do to better fulfill its goals. I look forward to hearing from each of them. But before I do move on, and before Vice Chairman Barrasso appears, I would like to call my very good friend here, Al Franken, for any statement he would like to make at this time. Al? Senator Franken.

**STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Thank you. Al is fine, for everyone here. Or you can call me Senator, or Senator Franken.

Anyway, thank you, Mr. Chairman, Senator Akaka, Danny, for holding this important hearing and thank you to all the witnesses for being here, and everyone who is in this room today. Unfortunately I will not be able to be here for all the testimony, Mr. Chairman, but I wanted to express my sense of value for today's hearing.

President Obama did the right thing by signing the U.S. onto the UN Declaration on the Rights of Indigenous Peoples, joining virtually every other nation in the world. The declaration establishes a framework for recognizing the rights of Native Americans and other indigenous peoples. In the context of the United States, it sets a standard or an aspiration for the Federal Government's responsibilities in its government-to-government relationship with sovereign Indian tribes.

Traveling to reservations around my State of Minnesota, meeting with tribal leaders, learning about the issues important in Indian Country always drives home to me how much work we have to do. Whether it is in law enforcement, education, housing, unemployment, energy policy or economic development, we face many challenges. The Declaration should spur us to do more and to do better.

Take energy development. Tribal areas make up 5 percent of land in the United States, but they contain 10 percent of our Nation's energy resources. Yet so far, we have missed the opportunity to harness these wind, biomass, solar, and conventional energy sources. Tribal leaders tell me again and again about their inability to access financing, enormous regulatory hurdles and a lack of technical assistance. The Declaration speaks to precisely those issues and directs us to overcome those challenges. That is something we must do. It is something I feel is our obligation, Mr. Chairman.

But this is just one example. I look forward to pursuing the many ways that domestic policy can be improved, so that we can

meet the responsibilities and aspirations spelled out in the Declaration. Thank you, Mr. Chairman, and thank you to all of you.

The CHAIRMAN. Thank you very much, Senator Franken, for your statement. Thank you for your interest in what we are doing in this Committee. And I certainly do appreciate it.

I again want to, because I want to hear from tribes, I want to hear from people out there, I will keep the hearing record open for two weeks from today. I encourage everyone to submit comments or written testimony if you want to be heard about what is going on, or if you want to let us know what you are thinking. I want to remind the witnesses to please limit your oral testimony to five minutes today. Your full written testimony will be included in the record.

So I would like to invite a member of the first panel, Mr. Del Laverdure, the Principal Deputy Assistant Secretary for Indian Affairs within the Department of Interior to come forward. Thank you very much for joining us, Mr. Laverdure. Will you please proceed with your statement?

STATEMENT OF DONALD "DEL" LAVERDURE, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. LAVERDURE. Good afternoon, Mr. Chairman, Members of the Committee. My name is Del Laverdure, I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of Interior.

I am pleased to be here today to discuss the United States' support for the United Nations Declaration on the Rights of Indigenous Peoples.

Less than 10 months after President Obama was sworn into office, he joined members of Congress, Cabinet Secretaries, senior Administration officials and hundreds of tribal leaders from across the Country at the White House Tribal Nations Conference. A number of those tribal leaders recommended to President Obama that he reexamine the United States' position on the Declaration.

Six months later, UN Ambassador Susan Rice announced that the United States would undertake a formal review of its position on the declaration. On December 16th, 2010, at the second White House Tribal Nations Conference, President Obama announced that the United States would support the Declaration. The Administration also released an accompanying document that provides a more detailed statement about the United States' support for the Declaration and our ongoing work in Indian Country.

The Declaration includes a broad range of provisions regarding the relationship between nations, organizations, and indigenous peoples. While not legally binding, the Declaration has both moral and political force. It is an important instrument, in part, because of the breadth of its positions on issues of concern to indigenous peoples, including consultation, the protection of sacred sites, the protection of tribal lands and natural resources and tribal economic and social improvement, among others.

In announcing our support for the Declaration, President Obama stated, "What matters far more than words, what matters far more than any resolution or declaration, are actions to match those

words.” We are working hard to live up to the President’s standard of action in a number of ways. First, we are reinvigorating Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. In November 2009, President Obama signed a memorandum directing all Federal agencies to develop plans to fully implement the Executive Order.

The Department of Interior published its proposed tribal consultation policy in the Federal Register on May 17th. We are seeking comments from the public before finalizing the policy.

President Obama’s directive has had its intended effect. Tribal consultations are occurring at an unprecedented level across the Federal Government. Some tribal leaders will tell you that the effect has been too many requests for consultations. We are exploring ways to coordinate consultation efforts among the different agencies.

Second, we are also firm in our commitment to the protection of tribal lands, territories and natural resources. The Department of Interior has made the restoration of tribal homelands a priority by improving the fee to trust process. In addition, we have also expressed our unqualified support for legislation that would address the harmful effects of the *Carcieri* decision.

The Department recognizes that tribes must be able to determine how their homelands will be used. That is why we have undertaken the most substantial reform to Indian land leasing in 50 years by revising our Indian leasing regulations.

Similarly, I recently testified before this Committee in strong support of Senate Bill 703, the Hearth Act, which would restore tribal authority to govern leasing on tribal lands for those tribes that wish to exercise that authority.

Third, we are also taking many steps to promote economic and social development in tribal communities. In partnership with Congress, we have provided an infusion of more than \$3 billion into Indian Country through the American Recovery and Reinvestment Act. A critical part of promoting the economic and social development of Indian, Alaska Native and Native Hawaiian communities is to prepare workers for good jobs in knowledge-based global economy. The Department of Labor has provided a number of grants to support employment and training services designed to help indigenous Americans.

Another crucial component of economic and social development is the health of our people. President Obama took a major step toward addressing health care gaps in tribal communities by signing the Affordable Care Act, which reauthorized the Indian Health Care Improvement Act.

In addition, First Lady Michelle Obama has included Indian youth in her Let’s Move initiative to address childhood obesity, by recently launching Let’s Move in Indian Country in the Menominee Nation.

Finally, tribal leaders have told us that no community can prosper unless its basic needs for public safety are met. This Administration worked closely with Congress to improve public safety through the enactment of the Tribal Law and Order Act. In addition, the Bureau of Indian Affairs has launched an intense community policing program on four large reservations with high crime

rates. We are already seeing promising results and hope to expand the program in the near future.

More than 20 Federal agencies provide a full range of programs to Native Americans. I have provided just a few examples of our efforts to address the needs of tribal nations in ways that utilize and complement the Declaration. We know that more needs to be done and we look forward to working with this Committee, tribal leaders and representatives from other indigenous organizations and communities to ensure that Native Americans, like all Americans, have the opportunities that they deserve.

Thank you for the invitation to testify today. I will be happy to answer any questions you have.

[The prepared statement of Mr. Laverdure follows:]

PREPARED STATEMENT OF DONALD "DEL" LAVERDURE, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Mr. Chairman and Members of the Committee. My name is Del Laverdure and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I am pleased to be here today to discuss the United States' support for the United Nations Declaration on the Rights of Indigenous Peoples (Declaration).

I. Introduction

On September 13, 2007, the United Nations General Assembly adopted the Declaration by a vote of 143 in favor, 11 abstentions, 34 not participating, and 4 opposed. The United States was one of the four nations that voted against adoption of the Declaration at that time. Less than 10 months after President Obama was sworn into office, the President held the first White House Tribal Nations Conference, on November 5, 2009.¹ President Obama, joined by Members of Congress, several cabinet secretaries and other senior administration officials from the Departments of State, Justice, Commerce, Education, Energy, Agriculture, Labor, Health and Human Services, Housing and Urban Development, and the Interior, and the Environmental Protection Agency, met with leaders invited from all of the then 564 federally recognized tribes to forge a stronger relationship with tribal governments. During the conference, tribal leaders recommended to President Obama that he reexamine the United States' position on the Declaration.

Six months later, on April 20, 2010, at the United Nation's Permanent Forum on Indigenous Issues, Ambassador Susan Rice, the Permanent Representative of the United States to the United Nations, announced that the United States would undertake a formal review of its position on the Declaration, in consultation with Indian tribes and with the input of interested nongovernmental organizations. Ambassador Rice stated that the United States recognized that "for many around the world, this Declaration provides a framework for addressing indigenous issues." During the review, the Administration held multiple consultation sessions with tribal leaders and other meetings with interested groups and individuals. The Administration received over 3,000 written submissions. An interagency team reviewed and considered all of the comments received and carefully considered the 46 articles contained in the Declaration.

On December 16, 2010, at the second White House Tribal Nations Conference, President Obama announced the United States' support for the Declaration. The President stated that "[t]he aspirations [the Declaration] affirms—including the respect for the institutions and rich cultures of Native peoples—are one[s] we must always seek to fulfill." The Administration also released a document to accompany President Obama's announcement that provides a more detailed statement about United States' support for the Declaration and our ongoing work in Indian Country.²

¹See <http://www.whitehouse.gov/photos-and-video/video/president-obama-opens-tribal-nations-conference>.

²See Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples—Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples at <http://www.state.gov/documents/organization/153223.pdf>.

II. The United Nations Declaration on the Rights of Indigenous Peoples

The Declaration is a not legally binding, aspirational international instrument that includes a broad range of provisions regarding the relationship between nations, organizations and indigenous peoples and individuals. While not legally binding, the Declaration has both moral and political force.³

The Declaration is an important instrument, in part, because of the breadth of its provisions on issues of concern to indigenous peoples, including:

- Consultation and cooperation before adopting measures that may affect indigenous peoples;
- Maintaining, protecting, and accessing in private indigenous religious and cultural sites;
- Protecting indigenous lands, territories, and natural resources;
- Improvement of the economic and social conditions of indigenous peoples; and
- Living in freedom, peace, and security as distinct peoples.

The United States' support for the Declaration is a milestone in the international community's efforts to identify and address the needs of indigenous peoples around the world. By supporting the Declaration, the United States joined more than 140 countries in support of it, including the three other countries that voted against adoption of the Declaration in 2007: Australia, Canada and New Zealand.

The Administration, however, does not see support for the Declaration as an end in itself, because—again quoting President Obama—“[w]hat matters far more than words—what matters far more than any resolution or declaration—are actions to match those words.” The President set a standard of action to which he expects his Administration to be held, and we are already being challenged to meet that standard. We view this challenge as a good thing. The Obama Administration is committed to working with tribal leaders to address the many challenges facing their communities. Toward this end, the Administration is looking to the principles embodied in the Declaration to meaningfully address the challenges that Indian communities face and to improve the lives of Native Americans. We are doing this in a number of ways.

III. Actions of the United States that Complement the Principles Embodied in the Declaration

A. *Consultation and Cooperation Before Adopting Measures That May Affect Indigenous Peoples; and Maintaining, Protecting and Accessing in Private Indigenous Religious and Cultural Sites*

We are working with tribal leaders to identify the matters that they believe are priorities for Federal government action and to formulate appropriate responses. Indeed, President Obama himself reached out to tribal leaders and invited them to Washington, D.C. to meet with him and many of his Cabinet officials at the two White House Tribal Nations Conferences that I mentioned briefly earlier in my testimony. Those sessions gave tribal leaders unique opportunities to discuss their priorities with the President and his most senior officials.⁴ Many of the priorities identified by tribal leaders at both White House Tribal Nations Conferences are very closely related to the principles outlined in the Declaration.

The first White House Tribal Nations Conference was organized, in part, in response to tribal leaders' emphasis on the importance of government-to-government consultation with tribes before actions are taken that directly affect them. In response, the United States has been working to reinvigorate implementation of Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments.” The Executive Order requires federal agencies to consult with tribal officials on “policies that have tribal implications,” a term that is broadly defined in the order. To improve the implementation of the order, President Obama, at the first White House Tribal Nations Conference with tribal leaders, in November 2009, signed a Presidential Memorandum directing all U.S. Government agencies to develop detailed plans to fully implement the Executive Order. I understand that the federal agencies completed their detailed action plans. For example, the Department of the Interior submitted its plan of action on February 3, 2010, and its proposed consultation policy was published in the Federal Register on May 17, 2011.

³For further explanation of these issues, see <http://www.state.gov/documents/organization/153223.pdf>.

⁴To access the report summarizing the main comments and recommendations made by tribal leaders at the December 2010 White House Tribal Nations Conference; see http://www.whitehouse.gov/sites/default/files/Tribal_Nations_Conference_Final_0.pdf.

76 Fed. Reg. 28446 (May 17, 2011). The Department is seeking comment from the public before making publishing a final consultation policy.

President Obama's directive has had its intended effect. Tribal consultations are at an unprecedented level throughout the U.S. government. Indeed, some tribal leaders will tell you that the effect has been *too many* requests for consultations. The Administration is therefore exploring ways of coordinating agency requests for consultation and of using technology to smooth the consultation process.

One example of a significant ongoing process of consultation with tribal leaders is the effort by the U.S. Forest Service (Forest Service) in U.S. Department of Agriculture (USDA) regarding sacred sites. Because the agency heard from many tribal governments that improvements were needed, the Forest Service now engaged in a year-long series of tribal consultations to identify better processes that can be put in place to protect sacred sites.⁵ This effort also complements the principle in the Declaration regarding maintaining, protecting, and accessing in private indigenous religious and cultural sites.

Tribal consultations are not only taking place, they are also having an effect. For example, in response to concerns expressed by tribal leaders, the USDA opened eligibility to the Renewable Energy for America Program to tribal business entities, thus improving their access to renewable energy program funding.

B. Protecting Indigenous Lands, Territories, and Natural Resources

The Administration understands that tribal homelands are essential to the health, safety, and welfare of Native Americans. Thus, the Department of the Interior has made the restoration of tribal homelands a priority by improving the process by which it acquires land in trust on behalf of tribes and individual Indians. In addition, President Obama, Secretary Ken Salazar, Assistant Secretary—Indian Affairs Larry Echo Hawk, and I have all expressed our support for legislation that would address the harmful effects of the 2009 U.S. Supreme Court decision in *Carcieri v. Salazar*, which held that under the Indian Reorganization Act of 1934 the Federal Government cannot take land into trust for Indian Tribes not under Federal jurisdiction in 1934.

The Department also recognizes that Indian tribes must be able to determine how their homelands will be used. That's why we are revising our regulations governing leasing on Indian lands. Once completed, we believe this effort will mark the most significant reform to Indian land leasing in 50 years. The Department's revisions will streamline the process by which leases of Indian lands are approved, thereby promoting homeownership, economic development, and renewable energy development on tribal lands. We conducted three tribal consultation sessions on this initiative in April, and are now reviewing and considering all tribal comments on the draft leasing regulations. Once that is completed, the Department will proceed to a formal Notice of Proposed Rulemaking. We intend to conduct further consultation at that time, in addition to receiving public comments on the proposed regulations. As it stands, our plan is to complete the rulemaking for these regulations in early 2012.

I also recently testified before this Committee in strong support of S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011, which would restore tribal authority to govern leasing on tribal lands, for those tribes that wish to exercise that authority. Under this legislation, tribes would submit their own leasing regulations to the Secretary for approval, and then process leases under tribal law without prior express approval from the Secretary of the Interior.⁶ This bill has the potential to significantly reduce the time it takes to approve leases for homes, small businesses, and renewable energy.

C. Improvement of the Economic and Social Conditions of Indigenous Peoples

As we all know, the global economic downturn has affected communities all across the country. But Native Americans have been hit particularly hard. The Administration has responded by taking many steps to promote economic and social development in Native American communities in both the short and the long terms.

Through the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, the Administration provided an infusion of more than \$3 billion into Indian Country to improve infrastructure and provide jobs.⁷ More than \$22 million of this money was provided through the Department of the Interior's program to improve housing in tribal communities.

⁵ See <http://www.fs.fed.us/spf/tribalrelations/sacredsites.shtml>.

⁶ See <http://indian.senate.gov/hearings/upload/Donald-Laverdure-testimony-S-636-S-703.pdf>.

⁷ <http://www.bia.gov/idc/groups/public/documents/text/idc010971.pdf>.

Perhaps the most important long-term investment for any country, people, or individual is in education. Tribal leaders have stressed, in particular, the importance of greater tribal control over the education of Native American students. The Administration has proposed changes to enhance the role of tribes in the education of their youth and to give them greater flexibility in the use of federal funds to meet the unique needs of Native American students. We have also accelerated the rebuilding of schools on tribal lands and are working to improve the programs available at tribal colleges.

A critical part of promoting the economic and social development of Indian, Alaska Native, and Native Hawaiian communities is to prepare workers from these communities for good jobs in the knowledge-based global economy. Grants under section 166 of the Department of Labor's Workforce Investment Act (WIA) support comprehensive employment and training services and targeted assistance designed to help indigenous Americans, including those with multiple barriers to employment, obtain the education, work experience, and skills needed to secure good jobs, especially in high-growth industries.

Another crucial component of economic and social development is the health of our people. Yet health care is often insufficient in indigenous communities.

President Obama took a major step towards addressing health-care gaps (for both indigenous and non-indigenous communities) by signing into law last year the Affordable Care Act, Pub. L. No. 111-148. Significantly, the Act provides permanent authorization for the Indian Health Care Improvement Act, which modernizes and updates the Indian Health Service, which provides health services for approximately 1.9 million American Indians and Alaska Natives in 35 states. The Administration expects this law to improve the lives and health of Native Americans.

First Lady Michelle Obama has also made a particular effort to involve Native American youth in her "Let's Move!" initiative to address childhood obesity. On May 25, 2011, the First Lady launched *Let's Move! in Indian Country* (LMIC) at the Menominee Nation in Keshena, Wisconsin.⁸ In addition, the First Lady and American Indian youth planted native seeds of corn, beans and squash in the White House Kitchen garden last Friday. LMIC brings together federal agencies, communities, nonprofits, corporate partners, and tribes to end the epidemic of childhood obesity in Indian Country within a generation. To further the efforts of LMIC, the First Lady recruited Native American athletes, like football stars Sam Bradford, a member of the Cherokee Nation, and Levi Horn, a member of the Northern Cheyenne Tribe, to encourage Indian kids to adopt healthy lifestyles.

One public-health challenge on which we are focusing particularly intensely is the unacceptably high rate of suicide by Native American youth. From November of 2010 through February of 2011, the Administration held listening sessions with tribal leaders from across the country on suicide prevention. These listening sessions sought input from tribal leaders on how the Bureau of Indian Affairs, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration can effectively work with Indian tribes to prevent suicide. These listening sessions will culminate in two national conferences on this topic. The first conference will be in Scottsdale, Arizona, in August, and the second conference will be later this year in Alaska.

Tribal leaders who have met with President Obama have stressed to him the importance of investment in infrastructure. President Obama agrees and we have supported many economic development initiatives that are focused on the needs of Native Americans. One exciting initiative was the announcement in December by Energy Secretary Chu of the establishment in the Department of Energy of an Office of Indian Energy Policy and Programs, led by a member of the Cheyenne River Sioux Tribe. The office is charged with directing and implementing energy planning and programs that assist tribes with energy development and electrification of Indian lands and homes. It has done extensive outreach to Indian tribes regarding energy issues on tribal lands and last month held a Department of Energy Tribal Summit that brought together over 350 participants, including tribal leaders and high-ranking cabinet officials, to interact directly on energy development and related issues.⁹

The Administration is also working with tribal leaders to bring their communities into the 21st Century by equipping them with high-speed access to the Internet. Both the USDA and the U.S. Department of Commerce (Commerce) have programs to do so. USDA awarded loans and grants worth over \$133 million to expand broadband access in tribal communities in the continental United States and an additional \$122 million to provide high-speed Internet infrastructure across many Na-

⁸ See <http://www.letsmove.gov/indiancountry>.

⁹ See <http://www.energy.gov/indianenergy/tribalsummit.htm>.

tive Villages in Alaska. Similarly, Commerce awarded approximately \$1.4 billion for broadband projects to benefit tribal areas.

These infrastructure investments go hand in hand with a wide range of projects to create jobs in Indian communities and prepare Native Americans to fill them.

D. Living in Freedom, Peace, and Security as Distinct Peoples

As we have been told repeatedly by tribal leaders, no community can prosper, economically or socially, unless its basic needs for public safety are met. For this reason, this Administration has taken a number of steps to strengthen tribal police and judicial systems. More flexible funding has been key. But perhaps more fundamental was the July 2010 signing by President Obama of the Tribal Law and Order Act (TLOA), Pub. L. No. 111–211. As you know, this comprehensive statute is aimed at improving public safety on tribal lands, including unacceptably high rates of violence against women. TLOA gives tribes greater authority to prosecute crimes and increases federal accountability for public safety in tribal communities. Moreover, in anticipation of the reauthorization of the Violence Against Women Act, this month, the Department of Justice will hold tribal consultation sessions to solicit recommendations from tribal leaders on whether additional Federal statutory authorities could enhance the safety of Native American women.¹⁰

In a related initiative, the Bureau of Indian Affairs launched an intense community-policing pilot program on four reservations with high crime rates. *Operation Alliance* provided 560 uniformed officers from four Interior bureaus and the USDA Forest Service who performed 10,000 officer days of police service to tribal communities. The officers far exceeded traditional law enforcement duties by also performing social and community service projects to build positive relationships and partnerships with the communities. The Department is already seeing promising results in decreased crime rates and the Bureau hopes to expand the program in the near future.

IV. Conclusion

There are over 20 Federal departments and agencies that provide a full range of programs to Native Americans. I have given you a few examples today to help demonstrate the extent of our Administration wide initiatives to address the needs of Native American governments and communities across our country in ways that complement the United States' support for the Declaration. However, we recognize that a lot more needs to be done and we look forward to working with Congress, tribal leaders, other indigenous peoples and representatives from other indigenous organizations and communities to ensure that Native Americans, like all Americans, have the opportunities they deserve.

Thank you for the invitation to present testimony on the United States' support for the Declaration. I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much for your statement. It was wonderful to know of the support that is coming from our Administration and really to present it directly, coming from the President and Department of Interior and also from your office in supporting the Declaration of the UN, and noting the ways in which we can support it.

And so let me ask you, and we may have other questions as well, do you believe the United States can be a world leader in indigenous rights? And that our current Indian law framework is the best model for implementing indigenous rights worldwide? And another part of that is, how can the U.S. improve our framework?

Mr. LAVERDURE. Thank you for the questions, Mr. Chairman. In terms of being a world leader, I think that the United States has been a world leader. And most recently, I traveled to New York City to the UN Permanent Forum. And at that time, collaborated and discussed with the four most recent countries to declare their support for the declaration, New Zealand, Canada and Australia. I think that even though we were looking for best practices among the groups for the rights of indigenous peoples, we felt that the

¹⁰ See <http://www.tribaljusticeandsafety.gov/inv-ltr-framing-paper.pdf>.

framework for the United States was very solid. Certainly more could be done and should there be changes that are requested to improve that, where appropriate, we certainly look forward to working with the Congress to make those improvements.

We do view the Declaration as being an aspiration and non-binding. But because it has that moral and political force that we utilize and complement it with all of the programs which are detailed in the announcement that accompanied the President's statement on all the things that we're trying to do in the Obama Administration.

The CHAIRMAN. I am glad to hear what you said. I take it as you saying that you look forward to working with Congress on this, even if we need some legislative changes. I think you did indicate that our Indian law framework is probably the best model that we have today. I take that deeply, because I know your background certainly is in these areas. If anybody knows frameworks of the American Indians, you are the one.

This is why I wanted to hear from you about what you thought about that kind of a standard.

Do you have an idea of how we can improve our U.S. framework?

Mr. LAVERDURE. I am sure there are a number of ways, certainly in my capacity previously as General Counsel, prior to this appointment, some of the considerations that Senator Franken had brought up about energy development, reducing barriers, that is the types of things that triggered some of the initiatives that we have today, which was to pull back any of the barriers in the leasing which are more than 50 years old. And down the line, whether it is some avenues of recognition reform which we have discussed with your staff. I think that the number of experts that are about to go on these next panels will certainly have a number of recommendations and we look forward to listening and hearing from those and seeing what we can work toward.

The CHAIRMAN. Thank you. And thank you for quoting the President as saying that we have to put things in action from our words. That is good for the Congress as well as the Administration, to work together on.

In promoting the rights identified in the Declaration, and I know again, I regard you as one who knows it well, what steps are being taken by the Department of Interior or the Administration to identify and review regulations, laws and policies for consistency with the Declaration? And then to develop proposals to bring them in line with that?

Mr. LAVERDURE. Thank you, Mr. Chairman. President Obama had signed and released a memo that directed all the Federal agencies to look toward efficiencies and streamlining Federal processes, some of them in the larger context including hiring of Federal employees and the like, which have been announced in other media outlets.

So too have we in Indian Affairs looked for that review. And that is, we have an Office of Collaboration and Regulatory Affairs which monitors things. The types of things that we have looked at are recognition reform in a regulatory manner, the leasing regulatory reform. We started the process on the Buy Indian Act provisions

to have regulations to implement the statute which is a little over 100 years old.

And in the renewable context, which is a presidential and secretarial initiative, we have a new sub-part on wind and solar leasing, which we want to implement within the leasing regulations, so that we have a foundation for tribes to measure when they choose to develop renewable resources, they have a foundation to work from in order to move forward on that. And involving less permitting and regulatory pieces by the Bureau, and more control by the tribes in that process as well.

So those are four major areas that we have looked at. We have certainly utilized and looked to the Declaration's principles on trying to meet those high standards.

The CHAIRMAN. Fine. Thank you. We will have another round. So let me ask Mr. Franken for any questions that he may have at this time.

Senator FRANKEN. Thank you, Mr. Chairman. I may not be able to stay for another round.

Mr. Laverdure, in the President's announcement of support for the Declaration, the Administration listed Indian school construction as an area that needs to be improved. This is an issue that I have brought up in this Committee many, many times. There is currently at least a \$1.3 billion backlog of school construction and repair needs in Indian Country, including on many of the reservations in my State.

And yet, the Administration only requested \$52 million for Indian school construction as part of the fiscal year 2012 budget proposal. Can you explain to me why the President requested such a low number, especially given the fact that by the Administration's own evaluation, Indian school construction policies need to be improved?

Mr. LAVERDURE. Thank you for the question, Senator Franken. I think that the thought was that the Recovery Act had helped expedite the list that had the backlog that you referred to, that there were, in that case, five new and replacement schools that were provided, and a whole host of facilities improvements that were provided under the Recovery Act. And that the corresponding match, that the previous totals had gone down and that we principally viewed the Recovery Act as taking the place of requesting much larger amounts and balancing all the priorities for tribal communities in the budget.

A couple of the priorities that we heard typically from the Advisory Committee, the Tribal Budget Advisory Committee, has been on contract support costs and the foundation, the floor, whenever they are exercising self-determination contracts and self-governance contracts, that that has been the priority stated from the Budget Advisory Committee. So we have focused on increases there as well as law enforcement and the like.

Senator FRANKEN. But that \$1.3 billion backlog is what is estimated after the stimulus package, right?

Mr. LAVERDURE. I believe that is accurate. I think that the challenges with the annual budget for both the Bureau of Indian Affairs and Bureau of Indian Education, the total amount being \$2.5 billion, when you have a backlog of that size, assuming that the en-

tire budget isn't increased correspondingly, then you have to pick and choose.

Senator FRANKEN. The entire budget for school construction, Indian school construction, is \$52 million. What is the cost to build the average school in Indian Country?

Mr. LAVERDURE. I think it varies on the size. But I assume that there would be, you would get a few schools out of that budget as opposed to replacement parts, not an entire new school.

Senator FRANKEN. Okay, this gets you one school, essentially. I have to say that I hear a lot of frustration from the tribes that I speak to and the chairmen that I speak to and the members of the tribes that I speak to about the Bureau of Indian Affairs and the bureaucracy and the responsiveness of it. Have you heard anything like that?

Mr. LAVERDURE. Yes.

Senator FRANKEN. What are you doing about it?

Mr. LAVERDURE. Well, the types of things, Senator, that I previously stated, which was all these reform efforts, management changes, and the like. And then we chose a new BIE director. And that is coordinated with the Office of Facilities Management. But certainly much more needs to be done.

Senator FRANKEN. Okay. Well, I thank you for your testimony. Mr. Chairman, my time is up and I do have to leave for another hearing. Thank you very much, sir.

The CHAIRMAN. Thank you very much for your questions, Senator Franken.

Mr. Laverdure, the Declaration is a fairly comprehensive assessment of the rights of indigenous peoples worldwide. Do you have, and let me stress this, an opinion, an opinion as to which articles or rights are not currently adequately expressed in our Federal law? And which ones may provide the greatest challenges to implementation?

Mr. LAVERDURE. Thank you, Chairman, for that question. Out of the 40 plus articles, there are some in the agency review that I think various different agencies felt were fulfilled and augmented or complemented. There were some that had much more work to be done.

And in my opinion, you would have to go article by article on those, which was done during the review. I didn't personally sit in all of those meetings, but the agencies reviewed each of those. I think the challenges and the interpretation of the articles is laid out in that very detailed announcement of support when the President announced his support for it. I think that contains examples of successes and also areas that are challenges that remain.

The CHAIRMAN. I hope we will have some time to look at that again closely for the purpose of seeing what we should be doing about that, and ones that will be causing challenges for us to implement.

Does the Federal Government support tribes in their understanding that it is a tribe's sovereign right to govern cultural heritage by developing tribal laws? The question is, does the Federal Government support tribes in their understanding on sovereign rights to govern?

Mr. LAVERDURE. Thank you, Mr. Chairman. Yes, we do believe it is in tribes' inherent sovereign right, and the government-to-government relationship, to regulate tribal cultural identity and cultural heritage.

The CHAIRMAN. Thank you for being so concise on that. We appreciate your work and look forward to continuing to work with you. I want to tell you that I really appreciate your being present here and regard your opinions and your statements as being valuable to us and to give us an idea also how the Administration feels about these concerns. And when we can understand that and work together on it, without question, we will be helping the indigenous peoples as much as we can.

I also want to conclude with you by giving you a chance again, your opinion as to whether you have any ideas of how we can work better together as partners in helping our indigenous peoples.

Mr. LAVERDURE. Thank you, Mr. Chairman. I think in my opinion to have continuous communication with the chief of staff and the others on both sides, and to look at the areas where we can get movement on sometimes existing legislation that is there that hasn't quite made it all the way through, and that we would promise to work in partnership with you on whatever it takes to improve the lives of indigenous people here.

The CHAIRMAN. Thank you. I want to thank you very much for coming today. I really appreciate your contribution to the hearing. Thank you very much.

Mr. LAVERDURE. Thank you, Mr. Chairman.

The CHAIRMAN. And now I would like to invite the second panel to please come forward to the witness table. And they will be Robert Coulter, the Executive Director for the Indian Law Resource Center in Helena, Montana; James Anaya, a United Nations Special Rapporteur on the Rights of Indigenous Peoples, and lives in Tucson, Arizona. Also we have Lindsay Robertson, a Professor and Faculty Director of the American Indian Law and Policy Center at the University of Oklahoma School of Law in Norman. And Ryan Red Corn, an Osage Member of the 1491s, a group of young Native film makers and actors. Mr. Red Corn joins us from Pawhuska, Oklahoma. Let me thank you so much for the clip that we are able to show here and really appreciate that.

So welcome to all of you. Mr. Coulter, will you please proceed with your testimony?

**STATEMENT OF ROBERT T. COULTER, EXECUTIVE DIRECTOR,
INDIAN LAW RESOURCE CENTER**

Mr. COULTER. Thank you, and good afternoon, Mr. Chairman.

I am a member of the Citizen Potawatomi Nation and as you said, I am head of the Indian Law Resource Center.

The Declaration on the Rights of Indigenous Peoples was initiated in 1976, primarily by American Indian leaders, but with the participation and support of Indian leaders from Central and South America. American Indian leaders turned to the international community principally because of the longstanding failure of the United States courts and Federal law to recognize that Indian nations and other native peoples in this country are entitled to con-

stitutional rights and to equality before the law. That was denied to us then and it is denied to us now.

Indian and other native nations in this country live with a system of Federal law today that is unconstitutional; it is discriminatory, and it is unworkable. It makes it almost impossible for native nations to overcome the social and economic conditions that they endure. It is like the separate but equal doctrine, it is like the Jim Crow laws that oppressed African Americans and others for many years in this country.

The Federal courts, for example, say that the United States Government can take Indian property, Indian land, without due process of law and without any compensation. And this Government does do that today. Congress claims that it has plenary power to do as it wishes when it legislates about Indian and other native nations, without regard for the Bill of Rights and without regard for the limitations of the Constitution. Congress believes that it can terminate Indian nations. It is said that this body can do away with Indian governments at will, without limitation, can violate treaties, normally without any legal liability, and so on, under the so-called plenary power doctrine.

The Federal courts routinely approve of Federal legislation that would be declared unconstitutional if it affected any other group in this country. Well, the Declaration calls upon the United States to put an end to that kind of discriminatory legal doctrine and that kind of unconstitutional treatment. The Declaration is an international human rights instrument that is non-binding. But it does recognize rights, and it recognizes the rules that countries are expected to follow when they deal with indigenous peoples. It is supported by global consensus. No country in the world opposes the Declaration today.

The Declaration includes many rights, including the right of self-determination, the right to be free from discrimination, rights of women, native women; these are very important. Rights to land and resources, real rights of ownership, not diminished rights, such as Federal law usually accords.

Well, what does all this mean? Others, I am sure, will elaborate more on what those rights are in the Declaration. But what should it mean for Congress? What should Congress do? Congress should, I believe, embrace the Declaration. I am very pleased with the words that you have spoken here today.

Congress should embrace the Declaration, because it is American. It is based on American values. It is American in its origin. It is an agenda for change that can easily be embraced. And it would be very positive.

But the practice of enacting legislation that takes the property of Indian nations or other native nations must come to an end. This country doesn't need to go on taking things from Indian nations. Congress must give up the notion that when it legislates in the field of Indian affairs or with regard to other indigenous peoples "subject to its jurisdiction, that it can ignore the Bill of Rights or the other limitations in the Constitution."

Native peoples too are entitled to Constitutional rights and to equality before the law. Native leaders are reviewing now what

kind of proposals they want to make. And Congress should listen carefully to those proposals when they make them.

Now, a starting point for some of the changes that could be made in Federal Indian law is the set of principles, general principles of law in this study that the Indian Law Resource Center has done. I will be submitting the entire study for the Committee's use. The Congress, this Committee, should conduct further hearings in the future to monitor what the Administration does to carry out the aspirations it has so well proclaimed and so well embraced. Let us see what progress is being made and whether we are getting at the root issues.

Congress should, I believe, also conduct oversight hearings and consider what Congress could do to correct the many damaging, and I believe unconstitutional, decisions that have been made by the Federal courts. It was, after all, the Supreme Court of the United States in 1955 that said that this Government can take the property of Indian nations without any compensation and without due process. That was invented by the Supreme Court. And there are other doctrines like that that Congress didn't invent, the courts did. And they need to be reviewed, they need to be changed in order to come into compliance with the Declaration. I believe Congress can find ways to help in that important process.

Thank you very much for having this oversight hearing, and I look forward to questions.

[The prepared statement of Mr. Coulter follows:]

PREPARED STATEMENT OF ROBERT T. COULTER, EXECUTIVE DIRECTOR, INDIAN LAW
RESOURCE CENTER

Good afternoon, Chairman Akaka and distinguished members of the Committee:

My name is Robert Coulter and I am head of the Indian Law Resource Center, a non-profit American Indian legal organization. I am a member of the Citizen Potawatomi Nation and I am a lawyer. I want to express my thanks to the Committee on Indian Affairs for holding this much-needed oversight hearing concerning the United Nations Declaration on the Rights of Indigenous Peoples.

The UN Declaration on the Rights of Indigenous Peoples originated in 1976, when it was developed by Indian nations and leaders in the United States and in Central and South America. The initiative was prompted, so far as Indian nations in the United States were concerned, by the knowledge that federal law was very adverse to the rights of Indian and Alaska Native nations in many fundamental respects. Federal courts persistently refused to recognize that Native nations are entitled to constitutional rights and particularly to equality before the law, and the Supreme Court even in modern times has continued to invent new injustices. The situation in Central and South America was even worse, with a nearly complete absence of the rule of law so far as Indians were concerned. Leaders decided to turn to the United Nations and to international law in hopes of calling attention to the injustices of domestic law and using human rights law to improve federal law, policies, and practices.

The conditions that gave rise to the Declaration have not improved much. Indian and Alaska Native nations continue to live with a system of federal law that is discriminatory, unconstitutional, and oppressive. It is unworkable and unjust. It is a legal framework that makes it all but impossible for Indian nations to improve their economic and social conditions. It is analogous to the "Jim Crow" laws and the "Separate but Equal" legal doctrine that oppressed African Americans and other racial minorities in this country for almost a hundred years after the end of slavery.

For example, it is often incorrectly said that the "doctrine of discovery" gave ownership of all the land in this country, particularly all Native lands, to the European nation that

“discovered” the area. The unfairness of this concept is obvious, and this “doctrine” has never in fact been the law. Nevertheless, courts and government officials routinely apply this mistaken and discriminatory rule and believe it to be the law.

Major parts of the federal law dealing with Native tribes and individuals are plainly in violation of the United States Constitution. The chief example is the “plenary power doctrine” supposedly giving the federal government almost limitless power over Native nations. Another example is the Supreme Court’s ruling that the federal government may take aboriginally held Native lands and resources without any compensation and without due process of law.

Congress frequently deals with Native property by enacting legislation that would be forbidden by the Constitution if it affected anyone else’s property. The government also manages or controls most Native land, frequently mismanaging the land and resources, and fails to account properly for the resources and moneys owed to the Native nations and individuals that own the land and resources. Congress claims the power to terminate Indian and Alaska Native tribes and to abrogate or violate treaties with Indian nations, usually without any liability.

This legal framework is not only inconsistent with our Constitution and human rights standards world-wide, but it has enormous adverse consequences for Indian and Alaska Native nations throughout the United States. It is not likely that Indian and Alaska Native governments can solve the deep social, economic, and governmental problems that afflict them unless this present, unfair body of law is thoroughly reformed. Effective governance requires an infrastructure of law that is reasonably fair, consistent, and predictable. Changing, clarifying, and improving current federal law affecting Native tribes and Natives of Hawai’i are absolutely necessary if nations are to gain true and effective control of their homelands and improve their economic and social well-being.

The Declaration can be useful as a guide for bringing about positive change in these problem areas of federal law and practice. Achieving the rights of the Declaration will make possible a secure, reasonable, business climate that will encourage investment and will create the opportunity for serious long-term economic development.

American Indian leaders worked in the United Nations with all the countries of the world for more than 30 years to win adoption of the Declaration. Thousands of indigenous leaders from all parts of the world participated in the debates and working group meetings to build, eventually, worldwide support for the rights of indigenous peoples, including American Indian nations and tribes. The Declaration was adopted with overwhelming support by the General Assembly in 2007, and within a few years the four countries that voted against it, including the United States, changed their opposition to support. There is now global consensus supporting the Declaration among all countries of the world.

When President Obama announced the United States’ support for the Declaration last December, the Administration said in a written statement that the Declaration “expresses the

aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.”

The Declaration is a non-binding human rights instrument that expresses the most important legal rules that countries are expected to follow in their relations with indigenous individuals and peoples. It expresses the legal rights of indigenous individuals and also indigenous communities, tribes, and nations – or “peoples”, the term used by the Declaration. The goal of the Declaration is to protect the cultures and ways of life of indigenous peoples and to protect these societies and individuals from mistreatment, suffering, and threatened extinction.

The Declaration contains 46 articles covering civil and political rights, cultural rights, economic rights, and much more. Let me highlight some of the most important human rights proclaimed in the Declaration.

Article 2 is of over-arching importance because it provides that indigenous peoples or tribes and individuals have the right to be free from any kind of discrimination in the exercise of their rights, particularly discrimination based on their indigenous identity.

Article 3 recognizes the right of self-determination, including a host of particular rights of self-government over internal and local affairs. The right of self-determination is extensive and is detailed in many other articles. It includes the right to form governments and other social and political institutions, the right to make and enforce laws, the right to control and manage their resources, the right to determine their own membership, and many other such rights. The rights spelled out in the Declaration are very similar to the rights of self-determination recognized in federal law.

This is a right that certainly must be extended by federal law to Natives of Hawai'i and all indigenous peoples.

Article 7 provides for the right of indigenous peoples to exist and live in peace as distinct peoples. It forbids all acts of genocide or violence against them.

Article 8 forbids actions to dispossess indigenous peoples or individuals of their lands, and Article 10 recognizes the right not to be forcibly removed from their lands.

Article 12 proclaims the right to practice their spiritual and religious traditions and the right to have access to religious and cultural sites.

Other articles recognize (Art. 13) rights to oral histories, languages, customs and ceremonies; (Art. 14) the right to establish their own education systems; (Arts. 18, 19) the right to participate in the government of the country; (Art. 20) the right to their own subsistence economic activities; (Art. 16) rights to media; and much more.

Article 22 speaks to the epidemic of violence against Native women and children, and Article 44 broadly recognizes that the rights and freedoms in the Declaration apply equally to women.

Of special importance is Article 26 providing for the right to own and use land and resources. It describes a full right of ownership, not a diminished or subordinate form of ownership.

Article 28 recognizes the right to fair processes for seeking the return of land wrongfully taken or for seeking compensation or other relief. There is nothing here that calls for “giving back the country to the Indians” or anything unreasonable. The Declaration envisions a workable and fair system of legal rights for all.

Article 29 recognizes for the first time in any formal instrument a right to protection of the environment. American Indians proposed this right to protect the Earth, and the Declaration incorporates this innovative concept of human rights — a concept that has become widely shared among many people and countries.

Article 37 calls for the observance and enforcement of treaties made with indigenous peoples. This is an important step forward, one that has long seemed necessary.

As with all human rights, the rights in the Declaration are not absolute, but are to be exercised with due respect for the rights and freedoms of others.

The Declaration, as we can see, calls upon the United States (and all countries) to end the discriminatory and unjust laws and policies that continue to be applied to Indian and Alaska Native nations and to Natives of Hawai‘i.

Much of what the federal government does is very much in accord with the Declaration, but there are important areas of policy and law that are not in keeping with our own United States Constitution nor in accord with the Declaration. What should Congress do?

- Congress must searchingly examine proposed legislation to see that it comports with the Declaration.
- The practice of enacting laws that take Native property without due process and fair market compensation must be stopped. This country does not need to go on taking Indian lands.
- There is no need to go on denying tribes and Native peoples the constitutional rights that are guaranteed for everyone in this country.
- Legislation that seeks to control or dispose of Indian resources and other property without

the consent of the nations or tribes that own them, must be stopped. This country does not need to control Native nations or their lands. Native peoples and tribes are perfectly capable of and entitled to self-determination – to govern their own property and affairs.

- The violation of treaties must not be permitted, and where treaties are violated, there must be just compensation or another fair remedy for the wronged party.
- Congress must change federal law and policies to allow tribes to adequately police and prosecute violent crimes in their communities. Native women are more than twice as likely to be victims of violence, because tribes lack criminal jurisdiction to prosecute outsiders.
- Termination of tribes must never again be considered, and abuses of the government's trusteeship must be not be tolerated.
- Legislation that singles out tribes or Indians for harmful treatment must be given strict scrutiny and must be rejected where it denies equal protection of the law.
- And Congress must abandon the 19th Century idea that it has powers over Indian and Alaska Native tribes that go beyond the enumerated powers in the Constitution. This idea is itself discriminatory and subjects Native peoples to disadvantages not inflicted on others.

The chief problems in federal law that need to be corrected are examined, and specific proposals for change are outlined in a major study by the Indian Law Resource Center. The study suggests some of the principles of law that could clarify and correct these legal problems and create a workable and just framework of federal law. These proposed legal principles are attached to my testimony, and I ask that they be included in the record. These proposals are now being considered by Native leaders, and they will decide what proposals to make to Congress and to the Administration. I do not pretend to speak for any tribes today, but I have spoken to many tribal leaders, and I can assure you that the desire for change is strong, it is widely shared, and the Declaration is proving to be a guide and an agenda for that change.

Most important, Congress must give the most urgent attention to the proposals that Native leaders make for changing and improving federal law.

In considering tribal proposals, Congress should embrace the Declaration as a guide, because it is as American as can be. It originated here, and it contains the same values of freedom, democracy, limited government, equality of rights, and the rule of law that formed our own Constitution.

The Administration, too, has assumed an enormous responsibility to conform its practices and its policies to the Constitution and to the Declaration.

President Obama's commitment to action, given to tribal leaders at the White House on December 16th last year, creates an extraordinary and very favorable opportunity to consult with federal agencies and departments and to seek concrete actions to improve the law and to improve federal policies and practices. This opportunity extends to the indigenous peoples of Guam and American Samoa, and Natives of Hawai'i, as well as to Indian and Alaska Native tribes. The Administration's statements are very encouraging and forward looking. The promised consultations have already begun in some quarters, and the opportunity for making proposals and seeking needed changes is enormous. Far more action is probable when Native leaders have informed themselves about the Declaration and begin to act on a nationwide level.

Much can be done by the administrative branch to achieve the rights in the Declaration without legislation. Regulations, policies, and practices have long needed to be improved and reformed to comply with the Constitution – not to mention the Declaration. I think, for example, of the need to reform and improve the processes for federal recognition of tribes.

Congress must continue to exercise oversight to examine the extent to which the Administration is living up to the standards of the Declaration, especially the standards that are set in our own Constitution.

Turning to the judicial branch, our federal courts have been responsible for some of the worst and most damaging legal rules and decisions concerning Native tribes, and Congress must conduct oversight hearings concerning the practices and decision of courts that impose rules upon tribes that are contrary to the Constitution and that deny tribes equality before the law. Such decisions include those that permit the taking of Native lands and other property without compensation or due process of law and that deny tribes criminal jurisdiction over all those committing violence against Native women on Indian lands. Moreover, federal courts and state courts as well have increasingly adopted the practice of ignoring precedent and established law in Indian cases and making up new rules that apply only to tribes — thus denying Native tribes the "Equal Justice Under Law" promised on the front of the Supreme Court building. Congress, through appropriate enactments and resolutions, should help to correct these court-made stains on America's legal system and the country's honor.

Chairman Akaka and members of this Committee, thank you again for holding this much-needed oversight hearing concerning the UN Declaration on the Rights of Indigenous Peoples.

I am happy to answer any questions whenever the time is appropriate.

Attachment: Native Land Law Project, Draft General Principles of Law Relating to Native Lands and Natural Resources, written and edited by the Indian Law Resource Center and sponsored and published by the Indian Land Tenure Foundation (February 2010)

Draft General Principles of Law Relating to Native Lands and Natural Resources¹
With a Non-Technical Version

1. The legal rights of Indian or Alaska Native nations to the lands and resources they own by reason of aboriginal ownership, use and occupancy are the full rights of ownership, management, control, and disposition recognized in law without any diminishment or discrimination based on the aboriginal origin of these rights.

Native nations have complete ownership of their aboriginal lands - not some limited or partial right.

2. The doctrine of discovery gave the "discovering" nation particular rights under international law as against other European or colonizing nations, namely the exclusive right to acquire land and resources from the Native or indigenous nations. The "doctrine of discovery" gave the "discovering" nation no legal right as against the Native nations or peoples.

"Discovery" did not give the discovering country any ownership of Native lands. It only gave the discovering country the exclusive right to buy the land from the Native owners

3. Legal doctrines such as *terra nullius*, the doctrine of discovery, and other such doctrines are inconsistent with the United States Constitution to the extent that they are mistakenly applied to diminish or impair the rights that Indian and Alaska Native nations hold with respect to their lands and resources.

Legal rules that deny, take away, or reduce Native ownership of their lands and resources are invalid, because they violate the United States Constitution.

¹For additional information or to request a copy of the complete study, *Draft General Principles of Law Relating to Native Lands and Natural Resources*, including extensive Commentaries on each of the Principles, please contact the Indian Law Resource Center, 602 North Ewing Street, Helena, MT 59601, by email at mt@indianlaw.org.

4. The ownership of land and natural resources, including rights of use and occupancy, of Indian and Alaska Native nations and individuals, including interests in lands and resources held by aboriginal title, is entitled to the same constitutional protections as the ownership and other interests of others in their respective lands and resources, and in addition Indian and Alaska Native nations and individuals may have other rights and legal protections arising from treaties, statutes, and other sources of law.

Native lands of all kinds are protected against taking and other harm by the government - just the same as all property is protected. And, in addition, some Native land is protected by other legal rules that have been created by specific treaties, acts of Congress, or common law. In other words, Native lands and resources have at least as much legal protection against taking or other harm as other lands, and sometimes will have additional legal protections as well.

5. Congress, by reason of the Fifth Amendment to the Constitution, may not take the property of Indian or Alaska Native nations and individuals, including aboriginal property, except for a public purpose, with due process of law, and fair market compensation with interest.

Congress cannot take any Native lands or resources, including aboriginal title lands, unless it is done with fair compensation, for a public purpose, and in accordance with law.

6. The United States has trust title to land owned or beneficially owned by a Native nation or individual only if the United States has acquired that title through a valid legal process, such as a treaty, agreement, or statute, and only if that trust title had or has the consent of all the Native nations or individuals concerned.

The United States holds trust title to Native land and resources only where the United States has gotten that trust title through some genuine legal process and only where the Native owner consents to the United States holding trust title. In other words, trust lands exist only where the United States has become trustee in a lawful way and only where the Native nation agrees to this.

7. The federal government has no power as a putative or supposed trustee to control or dispose of lands owned by an Indian or Alaska Native nation or individual unless the United States acts with the express, free, prior, and informed consent of the Indian or Alaska Native nation or individual concerned.

Unless the United States has genuine trust title, the federal government has no authority as "trustee" to sell, lease, or do anything with Native lands without the consent and authorization of the Native owner.

8. Where the United States holds property in trust for an Indian or Alaska Native nation or individual, or where the United States has, by reason of events or circumstances of whatever

nature, assumed control or possession of lands or resources belonging to or beneficially owned by an Indian or Alaska Native nation, or individual, the United States has all the responsibilities of a trustee as prescribed by law generally applicable to trustees or constructive trustees: including but not limited to the obligation to conserve the trust assets, to manage the assets for the benefit of the beneficiary, the obligation to account to the beneficiary, the obligation to avoid every conflict of interest, and the obligation to end the trusteeship and return the trust asset to the beneficiary when so required by the beneficiary.

Where the United States holds land or other property in trust for a Native nation, no matter how that came about, the United States has all the responsibilities and duties of a trustee that are required by law generally, without exceptions or limitations that reduce the government's responsibilities or duties.

9. A treaty with an Indian nation is a treaty within the meaning of the United States Constitution, the violation of which gives rise to liability and the right to redress.

The United States cannot freely violate treaties without providing full redress for the Indian parties, including compensation, restitution, or other appropriate, just remedy.

10. Congress has only such powers in the field of Indian affairs – particularly with respect to Indian and Alaska Native lands and resources – as are conferred by the United States Constitution. The Constitution does not accord Congress “plenary power” – in the sense of additional or unlimited powers – over Indian and Alaska Native nations and their property.

The United States Congress does not have “plenary” or unlimited power to enact laws dealing with Native nations and their property. Instead, Congress has only those powers that are stated in the Constitution, and those powers must be used within the limits set out in the Constitution – especially those in the Bill of Rights.

11. Indian and Alaska Native nations have the inherent right to form, maintain, and change their own governments and to create, maintain, and alter their own laws and legal institutions for the purpose, among others, of governing their own affairs and particularly for controlling, using, and managing their own lands and resources.

Native nations have the inherent or sovereign power to create their own governments and laws for all purposes, including for the purpose of using and controlling their lands and resources.

12. Native governments have the right to freely use, exploit, manage, and regulate lands and resources owned or beneficially owned by the nation, and they have governmental authority over allotted lands owned by Indian or Native persons within the reservation or subject to the jurisdiction of the Native government.

Native nations have the right to use, control, and benefit from their lands and resources without interference by the federal government that is not authorized by the Constitution or by the Native government itself.

13. Congress has no power under the Constitution or otherwise, with respect to any Indian or Alaska Native nation, to terminate its legal existence or to terminate its legal rights and status as a nation without the free, prior, and informed consent of that nation.

Congress cannot terminate any Native nation.

14. Land and other property owned by an Indian or Alaska Native nation in its sovereign capacity as a government is not taxable by any state or local government, whether or not that land is held in trust, in fee, or in any other form of tenure.

Native lands and resources cannot be taxed by any government, no matter whether the land is held in trust or otherwise.

15. The United States is bound by international law to respect the human rights and other rights of Indians and Alaska Natives both as individuals and peoples.

The United States must respect and abide by international law, especially international human rights law concerning indigenous peoples.

16. The United States must provide prompt and effective judicial remedies for the violation of the rights of Indian and Alaska Native nations and individuals in relation to their lands and resources. Such remedies must be non-discriminatory and otherwise consistent with the United States Constitution, applicable treaties, and generally accepted principles of fairness and due process of law.

The United States must make it possible for Native nations and individuals to go to court and get relief, or some kind of corrective action or compensation, whenever they suffer harm concerning their lands and resources or any other violation of their rights. These court remedies must be fair and effective.

17. The United States has a legal obligation to prevent abuses, fraud, and other wrongs against Indian and Alaska Native nations and individuals in relation to their lands and resources through the enactment and enforcement of reasonable legislation. This obligation of the federal government must be discharged in conformity with applicable treaties, the United States Constitution, international human rights principles, and these General Principles.

The United States has the duty to protect Native lands and resources by preventing abuses, fraud, and other wrongs against Indian and Alaska Native nations and individuals.

** The Native Land Law Project--Draft General Principles of Law Relating to Native Lands and Natural Resources (Lawyers Edition) has been retained in Committee files.**

The CHAIRMAN. Thank you so much for your statement. Personally, I really appreciate it.

Now we will hear from James Anaya. Will you please proceed with your statement?

STATEMENT OF JAMES ANAYA, PROFESSOR, UNIVERSITY OF ARIZONA JAMES E. ROGERS COLLEGE OF LAW; SPECIAL RAPPOREUR ON THE RIGHTS OF INDIGENOUS PEOPLES, UNITED NATIONS HUMAN RIGHTS COUNCIL

Mr. ANAYA. Thank you, Mr. Chairman. As you mentioned, I live in Tucson, Arizona. I am a Professor at the University of Arizona College of Law in that city.

Earlier this year, I was reappointed by the United Nations Human Rights Council as its Special Rapporteur on the Rights of Indigenous Peoples. My mandate from the Council, whose membership includes the United States, is to address the human rights conditions of indigenous peoples worldwide through various means, including by promoting the Declaration on the Rights of Indigenous Peoples.

I would like to begin my testimony by stressing that the Declaration is an expression of a global consensus about the rights of indigenous people that has developed over decades upon a foundation of widely accepted international human rights principles. The Declaration makes clear that indigenous peoples are subjects of international concern. That is something that was understood by the founders of this Country, and in the early Supreme Court jurisprudence, but was lost to subsequent generations of political actors.

The various provisions of the Declaration build upon core principles of self-determination and equality within a model of social cohesion that value diverse cultures and peoples. In fundamental respects, the Declaration is a remedial instrument aimed at addressing patterns of social exclusion, discrimination, cultural suffocation and even physical extermination that indigenous peoples have experienced and endured in ways not felt by others.

The Declaration itself calls upon States and the international community as a whole to take affirmative measures to bring the actual conditions of indigenous peoples into conformity with the rights that are articulated in this instrument. The endorsement of the Declaration by the Obama Administration on behalf of the United States is a welcome signal to the world that the United States joins in both the global consensus about the rights of indigenous peoples and in the concerted call for action to make those rights a reality. Although the Declaration is not itself a treaty, it is a strongly authoritative statement that builds upon the provisions of multilateral human rights treaties to which the United States is a party within the broader obligation of the United States to advance human rights under the United Nations charter.

The Declaration is meant to serve as a frame of reference for reflecting upon the existing conditions of indigenous peoples, and the laws and policies that affect them, as well as a standard for developing needed reforms and programmatic action, both within domestic settings and at the international level. Legislative bodies, such as this one, should look to the Declaration to help guide its priorities and action. I am hopeful that this hearing will be an important step toward that end.

The Declaration has bearing as well for executive agencies whose actions and responsibilities touch upon the interests of Native Americans in a multitude of ways. I am encouraged to hear that already a number of executive agencies are learning about the Declaration and considering how to use it in decision-making.

Additionally, the courts should take account of the Declaration in appropriate cases concerning indigenous peoples, just as Federal courts, including the Supreme Court, have referred to other international sources to interpret statutes, constitutional norms and legal doctrines in a number of cases.

Finally, I would like to point out that the United States has an important role to play in promoting the Declaration, both at home and abroad, as you, Mr. Chairman, have noted. In addition to guiding action concerning Native nations within the United States, the Declaration should also help guide the Federal Government's foreign aid, which in many places across the globe touches upon the lives of indigenous peoples. And the Declaration should be an important focal point of the United States' cooperation to advance human rights in multi-lateral settings, including at the UN.

In my role as United States Special Rapporteur on the Rights of Indigenous Peoples, I look forward to pursuing discussions with the United States Government and tribal leaders through appropriate channels and procedures, discussions on how the Declaration can help catalyze action to address the aspirations of indigenous peoples in this Country and to fulfill unfulfilled promises.

I believe that the United States' cooperation with the international system in this and other ways will not only help to advance the Declaration's objectives in this Country but will also contribute to greater cooperation within the United Nations and worldwide to advance the rights of indigenous peoples in keeping with the Declaration.

Mr. Chairman, the United States was a principal leader in the UN's adoption in 1948 of the Universal Declaration of Human Rights and has since then been a leader in pursuing implementation of that declaration. Mr. Chairman, the United States can and should now play that leadership role again.

I thank you very much, Mr. Chairman, for your attention.

[The prepared statement of Mr. Anaya follows:]

PREPARED STATEMENT OF JAMES ANAYA, PROFESSOR, UNIVERSITY OF ARIZONA JAMES E. ROGERS COLLEGE OF LAW; SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES, UNITED NATIONS HUMAN RIGHTS COUNCIL

Mr. Chairman, Members of the Committee, my name is James Anaya. I am a professor at the University of Arizona James E. Rogers College of Law in Tucson. Earlier this year I was reappointed by the United Nations Human Rights Council as its Special Rapporteur on the Rights of Indigenous Peoples. My mandate from the Council, whose membership includes the United States, is to address the human rights conditions of indigenous peoples worldwide through various means, including by promoting the Declaration on the Rights of Indigenous Peoples.

I would like to begin my testimony by stressing that the Declaration is an expression of a global consensus about the rights of indigenous peoples that has developed over decades, upon a foundation of widely accepted international human rights principles. The Declaration makes clear that indigenous peoples are subjects of international concern, something that was understood by the founders of this country and in early Supreme Court jurisprudence but was lost to subsequent generations of political actors.

The various provisions of the Declaration build upon core principles of self-determination and equality, within a model of social cohesion that values diverse cultures and peoples. In fundamental respects the Declaration is a remedial instrument, aimed at addressing patterns of social exclusion, discrimination, cultural suffocation, and even physical extermination that indigenous peoples have experienced in ways not felt by others. The Declaration itself calls upon States and the international community as a whole to take affirmative measures to bring the actual conditions of indigenous peoples into conformity with the rights that are articulated in this instrument.

The endorsement of the Declaration by the Obama administration on behalf of the United States is a welcomed signal to the world that the United States joins in both the global consensus about the rights of indigenous peoples and in the concerted call for action to make those rights a reality. Although the Declaration is not itself a treaty, it is a strongly authoritative statement that builds upon the provisions of

multilateral human rights treaties to which the United States is bound as a party, within the broader obligation of the United States to advance human rights under the United Nations Charter.

The Declaration is meant to serve as a frame of reference for reflecting upon the existing conditions of indigenous peoples and the laws and policies that affect them, as well as a standard for developing needed reforms and programmatic action both within domestic settings and at the international level. Legislative bodies, such as this one, should look to the Declaration to help guide its priorities and action, and I'm hopeful this hearing will be an important step toward that end. The Declaration has bearing as well for executive agencies whose actions and responsibilities touch upon the interests of Native Americans. I am encouraged to hear that, already, a number of executive agencies are learning about the Declaration and considering how to use it in decisionmaking. Additionally, the courts should take account of the Declaration in appropriate cases concerning indigenous peoples, just as federal courts, including the Supreme Court, have referred to other international sources to interpret statutes, constitutional norms, and legal doctrines in a number of cases.

Finally, I would like to point out that the United States has important role to play in promoting the Declaration both at home and abroad. In addition to guiding action concerning Native Nations within the United States, it should also help guide the federal government's foreign aid, which in many places across the globe touches upon the lives of indigenous peoples.

And the Declaration should be an important focal point of the United States' cooperation to advance human rights in multilateral settings. In my role as United Nations Special Rapporteur on the Rights of Indigenous Peoples, I look forward to pursuing discussions with the United States Government and tribal leaders through appropriate channels on how the Declaration can help catalyze action to address the aspirations of indigenous peoples in the country and to fulfill unfulfilled promises. I believe that the United States' cooperation with the international system in this and other ways will not only help to advance the Declaration's objectives in this country, but will also contribute to greater cooperation within the United Nations and worldwide to advance the rights of indigenous peoples in keeping with the Declaration.

The United States was a principal leader in the UN's adoption in 1948 of the Universal Declaration of Human Rights and has since been a leader in pursuing implementation of that Declaration. The United States can and should now play that leadership role again.

Thank you Mr. Chairman, and Members of the Committee, for your kind attention.

The CHAIRMAN. Thank you very much, Mr. Anaya, for your statement.

And now Professor Robertson, will you please proceed with your statement?

STATEMENT OF LINDSAY G. ROBERTSON, JUDGE HASKELL A. HOLLOMAN PROFESSOR OF LAW; FACULTY DIRECTOR, CENTER FOR THE STUDY OF AMERICAN INDIAN LAW AND POLICY, UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

Mr. ROBERTSON. Thank you, Mr. Chairman. It is an honor to have been invited to participate in this.

As you mentioned earlier, I am a professor of law at the University of Oklahoma. I am also an historian, and I have to apologize, because I find it difficult to think or speak about events of this magnitude without drifting into contextualizing them.

I think it is important to appreciate, building on what my friend Mr. Coulter said earlier, and Mr. Anaya a moment ago, that there is some history to this, the preparation of this document. It actually even goes back even further than the mid-1970s in a sense. This international expression resolves questions first raised at least in this hemisphere when the Spanish arrived in the late 15th century. So this has been 500 years plus in coming, at least for this

life-long resident of the western hemisphere, and I think that is worth reflecting upon.

The other element of the construction of the Declaration I think is important, that hasn't been mentioned, is the extent to which indigenous peoples themselves were invited to participate and did participate in the formulation of the document, which is evidenced by the strong support that one sees in Indian Country in the U.S. and in indigenous communities around the world for the document. It really is an historic opportunity here to bring two large group together, the descendants of European colonizers and the indigenous peoples in the various countries of the world, and come up with a new regime that works better and in a fairer manner for everyone. I applaud the Committee for launching this exercise in the United States, and building on the initiatives that the Obama Administration has already started.

I also thought it important to say a word about the Declaration in international context. This is also something that Mr. Anaya mentioned, and I am glad that he did. This is a global document, it is a comprehensive document. It is a global document as well. In my capacity as a law professor, I have had the opportunity since the Declaration has been passed to travel to different parts of the world as a private sector person, but invited to come in and consult in various countries on how to comply with its provisions.

And one sees a range of experiences. One country, for instance, has simply adopted the whole thing as a statute. That is one extreme.

At the other end, I might mention Japan, to which I traveled last fall at the invitation of a committee organized to put together their first statement of indigenous policy, relating to language and culture rights of the Ainu people on the northern island of Hokkaido. It is extraordinary to witness the birth of something like that, and to follow up on one of your comments a few moments ago, Mr. Chairman, in that sense I did acquire a perception that in certain ways, the United States could well act as a global leader, at least for some countries. It is not that we have done everything right, far from it. We have done a lot of things wrong .

But the point is, we have done some things right, and we have done a lot of things. And that may be the most important lesson for this historian of all. We have over 200 years of experience of wrestling with the legal nature of this interaction between colonizers and indigenous peoples, experiments with all sorts of programs that other states in the world might be considering.

I think it is important that the United States share its experience to the extent that that information is requested at the same time that we are analyzing it ourselves. We started a year and a half ago a clinic at the University of Oklahoma Law School focused on indigenous rights worldwide. We have sent teams of students out now to half a dozen countries with indigenous populations who have been largely voiceless. They are smaller countries, without the caliber of representation the tribes have had in the United States in recent years.

And we have discovered the same sorts of issues in those countries. We do this to support the Universal Periodic Review process at the UN Human Rights Council. But as I said, we have discov-

ered that there, too, the Declaration is a living document, but it is in some ways even more important, because their rights are well behind what they are in other parts of the world, to a certain extent including the United States.

Now a word on current efforts and future efforts. I appreciated Del Laverdure's comments, which were similar to those of Kim Teehee at the Permanent Forum in May, emphasizing, among others, the current Administration's efforts to help indigenous peoples in the United States in the areas of education, health, safety, infrastructure and jobs.

I would only add a few other things that might be thought about, and these are broad things. One has to do with process, and the other has to do with what I would call reconsideration of fundamentals. On process, I think one of the best things that came out of the Declaration and out of the current Administration's aggressive engagement with these issues is an emphasis on consultation with indigenous peoples themselves. I think that that ought to be continued, I think it ought to be expanded. I would like to see it happen more at the State level than it has been in many States. I think that is of crucial importance. The inclusion in the process results in a feeling of respect, which is understandable. Anyone would feel it. Also an opportunity to shape policy and to buy into the result. I think that has policy advantages that are maybe broader than may have been appreciated.

Reconsideration of fundamentals I raise to echo and build on a bit on something that Mr. Coulter said. Three areas occur to me which are raised in the Declaration which do invite us to rethink things that were done a long time ago, and maybe not done well. One of those has to do with the nature of land rights and the distinction that Mr. Coulter alluded to indirectly between different types of Indian land holdings. Aboriginal lands, executive order lands and treaty lands, are treated very differently for constitutional purposes. It is not entirely clear why. That is something that the Declaration invites us to reconsider.

Second, cultural and religious sites, which are an important part of the Declaration and something that we haven't entirely solved here is a problem. I think that is worth spending a little bit of brainpower, time and energy on.

Lastly and maybe most importantly, self-governance. The self-governance stem works here, but it is extremely complicated, and I think a Federal initiative to help simplify self-governance, I don't advocate any particular position, but when you have a regime that is constructed by a patchwork of statute, treaty and lately, primarily Supreme Court decisions, at least in the civil jurisdiction area, it is confusing, it is unpredictable, it is hard to manage on the ground.

And I think it is inconsistent with the goals of the Declaration of the Rights of Indigenous Peoples, which I read to be that the tribes, indigenous groups, be able to govern themselves and understand how that is supposed to operate and/or facilitate effective self-governance. That also I think relates to the comment that Senator Franken made about impediments to economic development, which I think simplification of self-governance rules would facilitate.

My time is more than up. I thank you again very much for the opportunity to appear here. As my colleagues, I welcome any questions.

[The prepared statement of Mr. Robertson follows:]

PREPARED STATEMENT OF LINDSAY G. ROBERTSON, JUDGE HASKELL A. HOLLOMAN
PROFESSOR OF LAW; FACULTY DIRECTOR, CENTER FOR THE STUDY OF AMERICAN
INDIAN LAW AND POLICY, UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

Good afternoon, Chairman Akaka and Members of the Committee, and thank you. It is an honor to have been invited to participate in this hearing.

My name is Lindsay Robertson and I am the Judge Haskell A. Holloman Professor of Law and Faculty Director of the Center for the Study of American Indian Law and Policy at the University of Oklahoma College of Law. From 2006 to 2008, I served as Private Sector Advisor to the United States delegation to the Working Group Sessions on the Draft U.N. Declaration on the Rights of Indigenous Peoples.

In addition to being a professor of law, I am a historian, and I find it difficult to think or speak about events of this magnitude without contextualizing them. I think it is important to appreciate that there is a history to the preparation of this document, which actually goes back further than the mid-1970s. This international expression resolves questions first raised in this hemisphere when the Spanish arrived in the late 15th century. The Declaration has been 500 years plus in coming, at least for us residents of the western hemisphere, and this is worth reflecting upon. Another important aspect of the construction of the Declaration is the extent to which indigenous peoples themselves were invited to participate and did participate in the formulation of the document, which is evidenced by the strong support for the document that one sees in Indian country in the United States and indigenous communities around the world.

The drafting of the Declaration was historic, as two groups, the descendants of colonizers and indigenous peoples in the various countries of the world, came together and designed a new regime that works better and in a fairer manner for everyone, and I applaud the Committee for launching this exercise in the United States, building on the initiatives that the Obama administration has already started.

I also thought it important to say a word about the Declaration in international context. This is a comprehensive document, and it is a global document. In my capacity as a law professor, I have had the opportunity since the Declaration was adopted to travel to different parts of the world and consult in various countries on how to comply with its provisions. One finds a range of experiences. Bolivia, for instance, has simply adopted the Declaration as a statute. I might also mention Japan, to which I travelled last fall at the invitation of a committee organized to put together Japan's first statement of indigenous policy, which focuses on language and cultural rights of the Ainu people on the northern island of Hokkaido. It was extraordinary to witness the birth of a new legal relationship, and the experience helped me appreciate the ways in which the United States could act as a global leader on these issues, at least for some countries. It is not that we have done everything right, far from it. We have done a lot of things wrong. But we have done some things right, and we have done a lot of things. We have over 200 years' experience wrestling with the nature of the legal relationship between colonizers and indigenous peoples, and we have experimented with all sorts of programs that other states in the world might be considering. It is important that the United States share its experience, to the extent that information is requested, even as we are assessing it ourselves. A year and a half ago, we started at the University of Oklahoma College of Law a clinic focusing on indigenous rights worldwide, which submits reports in support of the Universal Periodic Review process at the UN Human Rights Council. We have sent teams of students out to half a dozen countries with indigenous populations that have been largely voiceless, and we have seen first hand the extent to which for indigenous peoples in those countries the Declaration is a living document, in some ways perhaps even more so than for indigenous peoples in other parts of the world whose rights are relatively more secure. We all have much to learn from one another.

Finally, I would like to share some thoughts on current and future efforts. I appreciate the Obama Administration's efforts to assist indigenous peoples in the United States in the areas of education, health, safety, infrastructure, and jobs. The Declaration provides an opportunity for additional efforts, and I would encourage focusing on process and a reconsideration of fundamentals.

On process, I think one of the best things that came out of the Declaration and out of the Administration's aggressive engagement with these issues has been an emphasis on consultation with indigenous peoples themselves. That ought to be continued—and expanded. I would like to see more consultation at the state level than currently occurs in many states. Inclusion of indigenous peoples in the process evidences respect, provides an opportunity for indigenous peoples to shape policy, and makes it likelier that indigenous peoples will support the result.

On reconsideration of fundamentals, first, we might look again at the nature of land rights and the distinction between different types of Indian land holdings. Aboriginal lands, executive order lands, and treaty lands are treated very differently for constitutional purposes. It is not entirely clear why. We might also look at protection and access issues relating to cultural and religious sites, which continue to be contentious. Lastly, and maybe most importantly, we might simplify self-governance. The self-governance system works here, but it is extremely complicated, built on jurisdictional rules derived from a patchwork of statutes, treaties, and Supreme Court decisions. It is confusing, limiting, unpredictable, and hard to manage on the ground. Simplification of the self-governance system would bring us closer to realizing the goals of the Declaration.

Thank you.

The CHAIRMAN. Thank you. Thank you very much for your testimony, Professor Robertson.

Our next witness is Mr. Red Corn. But before we hear him, I would like to show a short video entitled Geronimo, Ekia. It will be on the screens, which is an example of reclaiming our icons and telling our own stories as Native peoples.

[Video shown.]

[Applause.]

The CHAIRMAN. That was moving. Thank you very much, Mr. Red Corn. That was a moving presentation.

I just want to recall between Senator Udall and me, that he chaired a hearing for me of this Committee on stereotypes. And of course, it pertains to this, what we are doing now. And it was unfortunate at that time that Geronimo was up in the news. But thank you again, Mr. Red Corn. I thought we would show it before I called you to make our statement. Will you please proceed?

**STATEMENT OF THOMAS RYAN RED CORN, FILMMAKER;
MEMBER, 1491**

Mr. Red Corn. [Greeting in native tongue.]

I would like to acknowledge you, Mr. Chairman. Thanks for having me here. I acknowledge Mr. Udall. My brother was a Udall scholar, got his bachelor's in civil engineering at the University of Kansas off that scholarship. I appreciate that. I follow Mr. Franken on Twitter, so I will catch up with him later.

[Laughter.]

Mr. Red Corn. I come here from the Wa.xa.k'o.lin district, actually outside of Pawhuska, Oklahoma. I would also like to acknowledge some of the people here in the panel, who have been working on this thing longer than I have been alive. I probably have no business being up here, because I don't represent anybody. I am not an elected official, I don't have a masters degree or a doctorate or anything like that, simply live in the exact spot where the road hits the pavement, as it were.

So I am kind of here, like I said, representing nobody. But I would like to talk about the Declaration. And I would also, I don't really want to spend too much time talking about the past. Obviously being as young as I am, I know what happened. But I am

really more concerned about the future. And I am concerned about the future of my young family, concerned about the future of my community.

A lot of that has to do where law intersects with actually, where it intersects with people. The first place is that it intersects in jurisdiction. I live on trust land in a community that sits under Federal jurisdiction. I have neighbors that deal drugs, and they have been raided over and over and over and over, and I can't say that enough, how many times they have been picked up and raided by Federal agents. But no prosecution takes place. I see this as problematic. I see this as problematic if we can't police our own communities and we can't provide for the safety of our own citizens. And if the Federal Government isn't going to do that, I'd like to really see that power transferred over to tribes.

At the time the Major Crimes Act was passed, perhaps the tribes were not infrastructurally viable to handle those situations. But I think that mode of thinking is probably outdated at this point.

I would like to see these powers are given to cities and States. The Federal Government doesn't manage drug cases on that level. And if the State of Oklahoma is not going to do it either, I think it is just another reason for tribes to be able to manage that.

The next thing I want to talk about is, drugs aren't the only issue in our community. I think nationally, the statistics say that one in three Native American women will be sexually assaulted or raped in their lifetime. These cases as well also fail to get prosecuted. I have a one year old daughter, she just turned one last week. I don't want to see her grow up in that situation. It is disturbing to me.

I don't think any woman, any Native woman on a reservation should have to be subjected to grow up in that type of situation. Those people are our mothers, they are our aunties, they are our relatives, they are a lot of things.

The next thing I would like to talk about, I was born in an Indian hospital in 1979 to a white mother and an Osage father. During the time that my mother was there, she was pressured for sterilization the entire time, until she was transferred out to another hospital where she could recover. I have friends that are my age that have given birth recently that are also still being pressured for sterilization.

Lastly, where these two things intersect is that right now, as some of these gentlemen have mentioned, we have a case before the Supreme Court. It is pretty much a case, I would as, from my inexpert opinion, of legal amnesia. They are saying that we are not a reservation. Basically they are saying we can be a reservation when we have gaming compacts, we can be a reservation when we have tobacco compacts, we can be a reservation when they want oil and natural gas resources.

And we say that, well, if we have our own jurisdiction and if we are a reservation, we should not be paying State income tax when we don't live on State jurisdiction and we do not work on State jurisdiction. If the State has jurisdiction over us, then where are they when the drug dealers are in my neighborhood? Where are they when rapes are going unprosecuted?

So these things, they coincide, they all touch each other. I want to live in a time when human rights is not seen as a radical idea. I believe these are not extra right, but these are human rights, these are basic human rights that other people are afforded in the Country. I believe that is why this resolution passed on an international scale, and that is why I am here today, to set a series of events that took place to put me here to ask you for these things.

So in that respect, I would just like to say that much. I.e ka.she.na ko.ko.na.

[The prepared statement of Mr. Red Corn follows:]

PREPARED STATEMENT OF THOMAS RYAN RED CORN, FILMMAKER; MEMBER, 1491

Hawe, Thatsi.e. Wazhazhe zhazhe wita Wakontia. I.e to.e ekipshe konbra.
I came here from the Wa.xa.k'o.lin district

I'd like to acknowledge the Senators and staffers. And I'd like to acknowledge all the nobodies watching on C-SPAN the ocho as well as the Daily Show Intern watching this. Aye!

I'm not an elected official. I'm not an expert. I'm not any kind of anybody. I come to you today representing nobody. I come to you representing all of the nobodies. I'm here to talk to you about the passage of the UN Declaration on the Rights of Indigenous Peoples.

I did not come here to talk about the past. I came here to talk about the future. The future of all nobodies.

Where my home sits, in the Wa.xa.k'o.lin district outside the town of Pawhuska, Oklahoma, I live under a different set of rules than most Americans. Where I live there are people who sell drugs whose homes have been raided by federal drug agents over and over again and nothing ever happens, because no one is ever prosecuted. The power to enforce the law resides with the federal government and not the tribal government. And the federal government has little interest in rooting out this type of behavior in my neighborhood. If this Declaration is adopted, I want jurisdiction for my community over these affairs. Localized control has always proven to be more effective than Federal control over these matters. These powers are given to states and cities. They can be given to Tribes as well. Because, if the federal government will not address this situation, then give us the power to do it ourselves.

Drugs aren't the only problems running rampant in my community, and the countless other reservation communities like it, because of the lack of true sovereignty, 1 in 3 Native American women will be raped or sexually assaulted in her lifetime. As appalling as that statistic is, the women in my life, real women, stats, have relayed their words to me. This breaks my heart and is not acceptable. These are my relatives. My cousins. My friends. My people. I have a daughter who just turned 1-year old. I would very much like to see this power to protect her shifted to tribes in her lifetime. In the hopes that not one more Native woman, not one more daughter, auntie, or sister, has to grow up under these circumstances. This institution has that power to transfer the protection of our women to us. The Declaration and the Executive branch recognize that when tribes have this power, that we thrive instead of falter. There is a 40-year track record of the benefits of this power shift towards tribal sovereignty and self-determination to back that claim up.

In 1979 I was born c-section in Hastings Indian hospital in Tahlequah Oklahoma, to a white mother and an Osage father. My white mother contracted an infection from that surgery. And while she sat there in the hospital, the staff repeatedly pressured her for consent to sterilize her. My grandmother had her transferred to Tulsa where she fully recovered eventually giving birth to three more boys. One has a master's degree in education and is a teacher. One is a civil engineer and the other one has a master's in architecture. My brothers are doing great things with their lives, and I'm proud of them. But my mother was nearly sterilized, and she was one of the lucky ones. Many other women were pressured and relented or were never even asked. I would like to tell you that this practice died with the 1970s but the Native women of my life today tell me that they are still being pressured in the same manner.

As I speak right now, my Osage people have a case that waits to be heard by the Supreme Court. The case effects our full reservation status. The Attorney General last week made a recommendation for it to be thrown out. It is our last ditch effort to have a legally fully recognized home. Lawyers play semantics with words over demographics and not actual written law, instead of letting us call it what it

is. Judicial erosion of our home. Our land. The land of those that came before us and hopefully those that will come after us. No treaties were signed. No new laws were passed. But the legal definition and premise that everyone had been functioning off of for the past 100 years now hangs in the balance. We are a reservation when the state wants money to build roads. We are a reservation when the state wants our gaming and tobacco compact money. We are a reservation when the state wants our Oil and Natural Gas resources. We are a reservation when we pay a gross production tax on those resources. Every land deed within our boundaries states that we are a reservation. We are a reservation for the tourists who pass signs, paid for by the state of Oklahoma that say YOU ARE NOW ENTERING THE OSAGE INDIAN RESERVATION. But the courts say we are not a reservation when we say we should not be paying state income tax when we do not live or work on land under the jurisdiction of the state of Oklahoma. If we are under Oklahoma jurisdiction then where are they when drug dealers are selling methanphetamines? Where are they when the women are being raped? Where are they when our homes are falling in? Give us the power to raise our own taxes to provide for our own infrastructure. Give us the power to prosecute outsiders, native or non-native, that break the law on our lands. This is not an "extra" right. This is a human right. Rights this country was founded on.

I want to live to see a day when the idea of human rights is not seen as radical. I am asking for the right not to be legally erased. I am asking for the right to be able to put my daughter's Indian name on her birth certificate in our own alphabet. I am asking for the right to attend a university where there are more live indians on campus than dead ones. The right for the Iroquois Nationals Lacrosse team's passports to be recognized so they can attend the World Championships for the sport that they invented. The right for the Prairie Band Potawatomi to put a tax on their tribal gas station to pay for roads and bridges on their reservation. I am asking for the right of self-governance. The right for Tribal police departments not to be expected to permanently sustain themselves on grants and the federal funding whims of someone in Washington DC, someone who will never visit my reservation or see my face. I want Indian lands to be the last to be flooded for dam construction along the Missouri river, and not the first. I don't want consultation. I want the right to say NO. I want the United States to be a leader on Indigenous rights so that they do not have to suffer the international embaressment of being one of the last countries to sign on.

And I do not want lip service. I want to be looked in the eye. I want you to shake my hand and tell me that you're on board to change the future of Indian Country. That you will adopt this declaration and make it binding. That you will give it teeth. That it will be the law of the land.

I was born Indian and I will die Indian but today, my nation is at war by way of judicial amnesia. This supreme court case is a classic example of the corrosive efforts enacted by the US federal government to assimilate us, the indigenous people of this land, and in order to ultimately be rid of us. So our land, our people, our way of thinking can be absorbed and conveniently forgotten. And the thing is, legislation containing words from this declaration can stop a 500 year long quest to wipe indigenous people from the maps of this hemisphere. It will allow us, all of us, to develop ourselves economically and to provide for our citizens so that the federal government does not have to. In 2004, Republican Congressman Lucas from Oklahoma provided historic legislation that kept Osages from being abolished as a legal entity and allowed us, for the first time in our history, to function as a democracy. With that legislation we have made great strides. We have made health care and housing improvements as well as bolstered our scholarship opportunities for our youth. But the legislation stopped short of shoring up our reservation status which is what we are now fighting.

That fight extending to Oklahoma passing state question 755, currently in litigation and billed as the ban of Sharia Law; it also banned recognition of tribal law. My marriage certificate was issued by a tribal court of the Pawnee Nation. Under such laws even my marriage is considered not valid.

This Geronimo code name is just another way for the United States to paint Natives as enemies of the state. That has to change if we are not only to survive but thrive as respective nations. I am just one person. From one tribe. The issues I have raised here are not new and not relegated to my people alone. Many others struggle under the same set of laws. All that can change with this declaration. It can turn all those nobodies into somebodies.

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The CHAIRMAN. Thank you so much for being here, Mr. Red Corn. Thank you so much for your candid presentation here and your statement.

We will have more than one round, Senator Udall. I will lead off with some questions and I will have you do the same as well.

Mr. Coulter, thank you so much again for being here. Much of your testimony suggests the need for a, maybe this is an understatement, a fairly comprehensive review, and in cases revision of current Federal Indian law in order to be consistent with the U.S. Constitution and international standards. In my opening statement, I said we want to begin to look at setting these standards, such as the Declaration.

Are there specific articles in the Declaration or specific areas of existing Federal law you prioritize for early review by this Committee and the Administration?

Mr. COULTER. Well, sure. I can point out some of them. Just to be clear, the United States does a lot in its law and its policies that is pretty good. It is certainly ahead of many other countries in certain respects.

But what I point out are fundamental problems that need to be corrected. It is not meant to say that everything the United States does is horrible, I don't believe that. The first article that I would particularly call attention to is Article 2 that says that indigenous peoples are entitled to be free from discrimination in the exercise of their rights. That is, if I can say so, perhaps the fundamental problem. Indian and other native peoples subject to U.S. jurisdiction are treated badly in a way that is not in keeping with our American values. It is not in keeping with our Constitution. It is a case of being denied equality before the law.

That fundamentally needs to be reviewed. That would sweep in this problem about treating tribal property as if it is not really property, treating money that belongs to tribes as if it doesn't really belong to them, treating other forms of property and other supposed legal rights of tribes as if they are not really protected by the law and that they can just be dealt with willy nilly without regard for the Bill of Rights when the Federal Government chooses to do so.

That is all discriminatory. Other groups don't seem to suffer from that.

I do call attention to the position of people who live in the territories of the United States that are also denied many constitutional rights. So that is a big one.

Article 26 on land and resource rights is another important one, because there, United States law explicitly and expressly denies Indian and Alaska Native tribes the kinds of property rights that everyone else, including corporations and businesses and churches and canasta clubs have. They all have property rights that are protected by the Constitution. But not indigenous nations. There is no justification for that. It can't possibly be justified. It is un-American, if I can say so.

So those are two big ones. Now, we could keep going, I suppose. But if we could deal with those, it would be awfully important and I think it would move us forward.

The CHAIRMAN. Thank you for your response. Professor Robertson, having served as private sector advisor to the U.S. Delegation to the UN Declaration negotiations in Geneva, can you briefly describe the negotiation process that was taken?

Mr. ROBERTSON. Sure, I would be happy to, I will do my best. You realize you are speaking to a guy who is used to speaking in 50-minute blocks, but I will refrain from that.

The negotiation process meetings, and I just helped out with this for the last three years or so, two and a half or three years, meetings held roughly twice a year, ten days to two weeks per session in Geneva. States and indigenous representatives were all in the same room for plenary sessions and for breakout sessions, so that we begin with assigned provisions from the draft, which everyone had had the intervening months to look over, to shop around their domestic governments. And we would begin addressing those on the floor. The chair would ask for comments from the states. The states would make comments, and then there would be weigh-in from members of the indigenous caucus.

If negotiations went ahead and there was agreed-upon text, we would keep moving. If they broke down, we would break out into smaller groups to hammer out language that would then be brought back to the plenary. It was a slow process. In some ways a very frustrating process. I was an observer in certain measure, because I was sort of on both sides of the room.

But in the end, a document was produced and we are here talking about implementation. So I guess I would have to say it was a successful process.

The CHAIRMAN. Thank you very much. I have further questions for Mr. Anaya and for Mr. Red Corn. But let me pass this on to Senator Udall for his questions.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Senator Akaka. It was a pleasure chairing that stereotype hearing. I know that you had looked really forward to being there and you were unavailable to get there. But you were there in spirit and the staff really helped and backed me up on that. So I appreciate that.

Let me ask kind of a broad question that I think maybe all of you may be able to jump into. One of you I think mentioned the Declaration that FDR talked about and the International Declaration on Human Rights. President Roosevelt talked about Four Freedoms. He talked about freedom of speech, freedom of religion, freedom from want, freedom from fear. And when you have these declarations and you talk about freedoms like this, one of the things that happens is it moves us all forward. There is no doubt about that.

I think when we have a universal declaration like this, a universal declaration of rights of indigenous peoples, it is, Professor, you talked a little bit about it. It is a struggle getting there, but it is a struggle worth having and worth going through the process.

I am wondering, can any of you give us some examples of what is happening around the world? What are the exciting things going on that we see growing out of this UN Declaration of rights? Is any

of that applicable to the United States? What are the areas we could be doing a better job on?

Mr. Coulter, do you want to start on that?

Mr. COULTER. One of the very gratifying things was that even as we were developing the Declaration and pushing it through years and years of negotiations, countries all over the world began to take up these rights and understand that they were really good things that really helped the governance in their countries. Self-determination and autonomy regimes were implemented in country after country before they were ever adopted in the Declaration, that is before the adoption of the Declaration. Countries found out that these rights are good things. It is really helpful to everyone involved.

That was very gratifying, and I think that is continuing.

Mr. ANAYA. Just briefly, I have been very happy to see in various countries that I have engaged in in my role as UN Special Rapporteur, that there is more and more awareness at all levels of government and discussions in the broader public about the Declaration itself and the rights of indigenous peoples more generally. What we see is a pattern of legislation and even constitutional reform taking place that incorporates, if not explicitly the Declaration, it incorporates the principles that are found in the Declaration. So that is extremely positive.

The educational value of the Declaration, I think, cannot be underestimated. There are of course still negative attitudes towards indigenous peoples worldwide. I think the last hearing that was referenced has to do with those negative attitudes persisting in this Country, as they do elsewhere.

The Declaration, I think, can and should be thought of as an educational instrument. What we see in many countries is it being used and promoted as an educational instrument within the public schools even, within various media, through various media, through films. That perhaps is something that can be learned from experiences elsewhere, that educational value of the Declaration, which is I think necessary for real change to come about in any society. We can talk about good policies, we can talk about good legislation, but unless there is that solid social foundation for those policies, and for those changes, they are going to be difficult to come about.

Mr. ROBERTSON. I agree with what both my colleagues have just said, and I would only add to that, another sort of side effect of this that I have observed first-hand has to do with simple communication. Ten years ago, I sat down and thought, I should really teach a class in Canadian First Nations law. And about a minute later, I thought, I know nothing about Canadian First Nations Law, and I would be the worst person in the world to teach it.

So I called a friend of mine, Brad Morse, who is now a dean in New Zealand, teaching at the University of Ottawa then, and said, hey, Brad, I don't know anything about what you do and you know a lot about what I do, but maybe your students don't. And we set up a distance ed course, turned out to be the first, between law schools, or so we have been told, where my students and I taught Brad and his students U.S. Indian law and they taught us Canadian First Nations law.

That opened our eyes to the fact of the utter ignorance of most everybody we knew as to what other countries with similar legal questions, I am talking about English-speaking countries here, had done, sort of an interaction with indigenous populations. So we expanded this, we now have six, seven universities around the world, in Canada, New Zealand, Australia and the University of Oklahoma, engaged in this conversation. That has been enormously enlightening.

What the Declaration did, as Tim mentioned, is it sort of made this a live issue everywhere. There wasn't a country in the world that could ignore it. So we have started to, and I have started to get communications from people all over the place who are interested in learning what is going on here and sharing what they are doing and talking about questions.

One thing I would mention to both of you gentlemen as members of the United States Senate is that a lot of this seems to be happening on the university level or as Jim is doing, as Special Rapporteur, making contact with people around the world. There hasn't been, to my knowledge, outside of some stuff that Interior has done, that Del Laverdure mentioned earlier, a focused U.S. comparative effort on this. I think maybe the place to house it would be Interior. Maybe it would be the State Department.

I would just mention that the Canadian equivalent of the State Department, the Canadian Foreign Office and the Australian both have desks dedicated to international indigenous issues. It seems to me that if we are really serious about this, providing some sort of funding to the legal office of the State Department to put somebody in place to start having these conversations on behalf of the United States would go a long way not only toward helping us get educated as to what was happening in the rest of the world, but to help the rest of the world understand what was happening here on these issues. Then we might have some real meaningful global effort to improve what the species does on the issue of the rights of indigenous peoples.

Senator UDALL. Thank you.

Mr. Red Corn. I am going to be really honest. I don't leave Oklahoma that much, so I have no idea.

[Laughter.]

Mr. Red Corn. That is just really brutally honest. The only thing that I can tell you is that in my lifetime, and I am not very old, I have seen a large improvement in my own community. When I was a little kid, the road in front of my house was dirt, and now it is super keen, it has curbs and everything. But a lot of that has to do with an influx of money. It is not sustainable money, it is Federal money. It doesn't respond to or it doesn't represent a structural change for sustainability within the community.

Now, on a global level, I can tell you that the communities in New Zealand, the communities in Australia and the communities in Canada have all started kicking out incredible films in and around indigenous issues. And it has really, I think, served to put wind in the sail for a lot of these types of issues that otherwise people wouldn't know about. There was a great film out of Australia, I think, called Rabbit Proof Fence, that came out. There is an elder that I met from Canada named Alana Subomsowim, who did an

amazing documentary on the Oka Crisis in Canada, when they were trying to put a golf course over a burial ground. Had a stand-off there, it was not pretty.

But those types of things can be avoided. I think in the modern area, with the democratization of media, which is how I am even here, because I don't have a big movie studio behind me or anything like that, I have a camera, I point it at something, I edit it and I throw it up on the internet along with a bunch of my friends. That is pretty much it.

Without any type of funding, that message spreads. And it spreads to Canada. We have a lot of people in Canada that follow us and contacts we have made, and these other countries that are considering this declaration, like I said, New Zealand, Australia and Canada.

Like I said, I don't leave Oklahoma that much, so I just know what I see on the internet. And everybody knows everything on the internet is perfectly true.

[Laughter.]

Senator UDALL. Thank you, Chairman Akaka.

The CHAIRMAN. Thank you very much, Senator Udall. If you have further questions, we can certainly pick it up.

Let me ask this to Mr. Anaya. And again, I am going to ask for your opinion. Will meeting the Declaration standards substantially affect our standing in the world or enhance our ability to achieve other foreign policy goals?

Mr. ANAYA. Mr. Chairman, thank you very much for that softball that you have thrown me. And of course, unexpectedly, the answer from me is yes, absolutely yes. The U.S., as I said in my initial statement, has, has been a leader for human rights in the world and has stood for human rights in the world.

It has been somewhat slow to take any kind of leadership role on the issue of indigenous peoples for reasons that have to do with negotiations and the no vote on the Declaration and other reasons.

But with the endorsement of the Declaration by the Government, by the Obama Administration, the attention of the world has been focused on the United States to see now what that is going to mean in practical terms. That, as I said, was an extremely and still is an extremely welcome development. It is rare when a Government delegate at a meeting on indigenous peoples at the United Nations gets an applause.

In the last few statements I witnessed by the United States representative at the UN Permanent Forum on the Rights of Indigenous Peoples, the representative has gotten applause. There is a lot of hope in what the United States will do because of its leadership role. And that leadership role can help to catalyze developments elsewhere. It can help to motivate action on a global scale. It can help to solidify the United Nations and other international institutions' focus on the issue, and specific action by specific countries as well. Not only by the example that the U.S. may give, but also by its bilateral and multi-lateral cooperation, which I think is very important and has a great potential to genuinely contribute to specific and concrete, positive developments on the ground for indigenous peoples worldwide.

So yes, absolutely, the U.S. can take a leadership role, and its endorsement of the Declaration positions the Country extremely well to do just that.

The CHAIRMAN. Thank you so much for that. The reason why I am asking you that is that this panel is pretty well acquainted with what is going on with the Declaration. I want your opinions, not necessarily that of other groups or the Administration or the Congress, but your opinion on this. So thank you very much for that.

Mr. Red Corn, I want to tell you agin, thank you for the clips and what you are doing with young people, and using the media to get to them and attract their attention as well to these issues. So let me ask you in a sense a different kind of question. As a young native man, what does the Declaration mean to you?

Mr. Red Corn. I would say that it means there is hope. Like I said, there is a lot of work that has been done before I was even born. I live in a completely different time than my father has, a completely way different time than my grandfather did. And all the work that has been done really serves to even like, I run a small business out in the middle of nowhere. Without the rising tide of all of Indian Country, I would not be able to sustain a living to provide for my family on my reservation. I would be in a big city somewhere working for a large white ad agency or something like that, in all likelihood.

But because of all the work that has been done and all the work that continues to be done, it create, the rising tide raises all boats.

As far as reaching the youth, there is relatively little indigenous new media that is being created, at least on a high end basis that has viral capacity, able to access their minds and their thoughts. We are in a different era of assimilation and acculturation. There is more than one or two or three or four or five threats that are served to replace our languages, to replace our songs and our iPods, to replace what we do on the weekends, from going to ceremony as opposed to going to Six Flags. There are a lot of different things that serve to pull our attention away.

Without those things, without those cornerstones of who we are, which I consider cornerstones of our sovereignty, those types of things will go away. And I don't, at least for me and my family, I am not going to stand there and watch that happen in my lifetime. So you know I am going to make sure my daughter knows her language. I try to only speak Wa.xa.k'o.lin to her. I am trying to raise her with everything that I have been taught. When I got to college, I realized what a unique situation I was in, because there were kids from relocation families that were there that had probably five times the blood quantum, looking at me having right now. And they were without their ways, without their culture. And that move back towards that and their ability to reclaim that is paramount in this struggle, because this Declaration protects those things. It protects the erosion of those things and it holds them up and says that they are important as alternative ways of thinking, alternative ways of farming, alternative ways of behaving, of alternative ways of respect and all the protocol that goes in that. It is embedded in the way that we conduct ourselves. It is the very fabric which holds what we have left together.

From that respect, I fully support this and I would like to see teeth put into it, so that I can feel the effects of this Declaration from where I live at home.

The CHAIRMAN. Thank you so much for your statement. Now I feel good about this hearing. Without question, it is beginning to reach people out there. I am sure it will ring about a lot of comment, which we can probably use to make the kinds of changes that are needed.

So as I said, we will have a second round. Any further questions you may have, Senator Udall?

Senator UDALL. I think I am okay, Senator Akaka. And also, I am looking forward to the third panel.

The CHAIRMAN. Yes. Well, thank you very much.

With that kind of comment, and the comments from our panel, I want to again really, really thank you folks. Because I look upon you as experts in the Declaration and legal side. We need to really look hard on that sand see what we can do to make things, in Hawaii we call it pono, or make it right. So that is where I am.

Thank you for joining us and helping us. We are looking forward to the days ahead to see what we can do about this. So mahalo nui loa, thank you very much.

Now we will have our final panel to the witness table, please. We have the Honorable Fawn Sharp, President of the Quinault Indian Nation from Taholah, Washington. Frank Ettawageshik, the Executive Director for the United Tribes of Michigan in Harbor Springs. Duane Yazzie, the Chairperson of Navajo Nation Human Rights Commission, in Window Rock, Arizona, and Melanie Knight, Secretary of State for the Cherokee Nation in Tallequah, Oklahoma. I want to welcome our third panel, and President Sharp, will you please proceed with your statement.

STATEMENT OF HON. FAWN R. SHARP, PRESIDENT, QUINAULT INDIAN NATION

Ms. SHARP. Thank you, Chairman Akaka, Senator Udall. It is an honor and privilege to be here to provide testimony on this very important topic.

On behalf of the Quinault Indian Nation, we applaud the decision of the United States to support the United Nations Declaration on the Rights of Indigenous Peoples. I think it is important at this point in time to recognize where we are in history, and at this generation.

When you think back to centuries of despair, discrimination, the loss of life, resources, by means that, as the earlier panel pointed out, were contrary even to the laws of the United States and unconstitutional, the devastation continues through today's generation. But on December 16th, 2010, when President Obama announced that the United States would change its position and now embrace fundamental principles and values that transcend national borders, I believe this Country, the United States, began to embark on a path to heal the soul of Indian Country, a soul that we see the symptoms every day in every community within our nations, the levels of poverty, unemployment, alcohol and drug abuse.

So today is a very positive day that Congress is taking positive steps to ask us tribal leaders, how can we begin to take steps to-

ward healing, and on that new path. So it is quite remarkable to point out, and we truly appreciate the time we have here today.

I am going to point to five specific questions. I have provided written testimony, but I do want to focus on some basic questions that I believe will help this Committee and provide some guidance.

The first question is, what are the next steps? From the Quinault Nation's perspective, we believe that some of the next steps are for this Congress to adopt policies and legislation that address the notion of free prior and informed consent as well as protections of intellectual property. Throughout my testimony, I will provide some reference to some very specific articles within the Declaration to illustrate these points.

The next question that was posed to our nation is, what is good domestic policy and what are the benefits to tribal governments, communities and citizens. For us, good domestic policy will recognize and embrace our long and traditional histories, our cultures, our values that are unique to Indian Country and recognize that we do have a unique political relationship with the United States, as a fundamental principle.

The second way that we think good domestic policy can be addressed is to positively recognize, affirm and protect our jurisdictional sovereign powers. We believe that that action in and of itself gets to the point that President Obama made that words are words, but action means so much more. And we have heard many, many colorful words over the years. But actions come down to where the rubber meets the road in our jurisdictional and sovereign powers.

How is good public policy, domestic policy formulated, the second question. We believe that good policy is so much more than a consultation process. We believe that implementing standards for the UN Declaration means that the United States no longer has the permission nor the power to unilaterally make decisions that affects our lands, our people and our resources.

Fourth, what has not been addressed in Federal policy and how have tribal efforts for economic development and commerce been impacted? This is probably one of the more near and dear to the Quinault people. In the United States, the implementation of the Declaration must be taken in the context of our treaty-reserved rights, including the rights to hunt, fish and gather our resources. That is the blood line of communities in the Northwest, our ability to hunt and fish has provided viable economies from the beginning of time. We hope that the protections of the Declaration will continue to sustain those efforts.

Lastly, with the jurisdictional morass that is created by the courts, Congress and the Administration, we believe we are at a unique point in time where all three branches of government can get behind the declaration to ensure that future generations will have a strong foundation in which to govern their lands and territories.

A last recommendation that we would like to offer is for Congress to appropriate \$12 million to allow capacity building for indigenous peoples to participate in international conferences worldwide. As an example, in the climate change crisis, the world is making policy decisions without the important knowledge that Indian people possess. We are not at the table. And a global crisis

like climate change requires that responsible leadership draws on all forms of knowledge, social, political, economic and cultural. And until we get to the table, it is not only hurtful and harmful to us as Indian nations, but to the rest of the world. They do not have the benefit of our knowledge.

So we ask that that will, with that action, we would see strong implementations of Article 3, Article 18, 19, 23, Article 21, subparagraph 1 with that one initiative. Thank you.

[The prepared statement of Ms. Sharp follows:]

PREPARED STATEMENT OF FAWN R. SHARP, PRESIDENT, QUINULT INDIAN NATION

The Quinault Indian Nation applauds the decision of the United States to support the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP recognizes Indigenous rights in vital areas of self-determination, rights to lands, territories and natural resources, cultural rights, and the concept of free, prior, and informed consent for actions affecting indigenous peoples.

After several decades of debate and negotiation, the world community has now reached consensus on minimum standards for the survival, dignity, and well-being of indigenous peoples. Although the United States has a well earned record denouncing the human rights records of other states that violate the rights of peoples within their jurisdiction, it was not until 1975 that the U.S. and the Union of Soviet Socialist Republics concluded the Helsinki Accords. It is within the framework of those accords that the U.S. agreed to conduct its relations with Indian governments on a government-to-government basis and to implement policies consistent with the accords' Human Rights baskets. The U.S. Department of State was obliged to report to the Commission on Security and Cooperation in Europe (CSCE) about U.S. treatment of Indian peoples. In its 1979 report, the U.S. government submitted statements, which lend considerable weight and significance to UNDRIP.

The report included remarkable statements concerning the U.S. government's policy on Indian self-determination:

- [The policy] is designed to put Indians, in the exercise of self-government, into a decisionmaking position with respect to their own lives. (USA Helsinki Report to CSCE 1979, p. 149)
- The report further asserted that the state's relationship to Indian nations is one where ". . . the U.S. Government entered into a trust relationship with the separate tribes in acknowledgment, not of their racial distinctness, but of their political status as sovereign nations." (USA Helsinki Report to CSCE 1979)

At its core, UNDRIP is a vindication of long-standing U.S. human rights policy since President Woodrow Wilson introduced the concept of self-determination at the beginning of the 20th century. As the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples for the United Nations stated in his August 2008 report:

[The Declaration] "represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law."

Last winter, President Obama announced the support of the United States for UNDRIP at a gathering of tribal leaders, finally embracing an international instrument that enshrines the very principles it claimed as relevant to the Helsinki Final Act of 1975.

Now that the United States has embraced UNDRIP, attention must turn to implementing its spirit and principles in domestic policy towards Indian nations. UNDRIP sets forth fundamental principles within an international framework which can guide political relationships between the United States and its indigenous peoples.

The Quinault and other Indian Nations of this country have experienced firsthand the loss of land and resources expropriated through force, coercion, fraud, treachery, and sometimes treaties, and continue to experience a sad legacy of devastation, frustration and despair left behind by a trail of broken promises and disregard for human rights of their peoples. Poverty, unemployment, and economic deprivation are extreme. Social systems are inadequate to provide basic health, education, and public safety. Tribal natural resources continue to be subject to colonial exploitation and deterioration from neglect.

I do not raise these points to dwell on the injustices of the past, but rather to express my opinion that full endorsement of the UNDRIP by the United States opens the way to embark on a path to forge a better future for the generations of tribal and non-tribal peoples to come; and constructive relations between Indian nations and the United States:

- Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of political states.
- Indigenous peoples have rights to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- Indigenous peoples and individuals are free and equal to all other peoples and have the right not to be subject to any kind of discrimination based on their indigenous origin or identity.
- Political states have the obligation to provide for substantive, good faith participation by indigenous peoples in legislative or administrative processes and measures which affect their rights and interests and to obtain their free, prior and informed consent.
- 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.
- It must be understood, furthermore, that by endorsing UNDRIP, the United States took a key step to enable the United States government to constructively contribute to the current climate change negotiations. The U.S. government's foreign policy is now in line with its domestic pronouncements, providing a firm foundation upon which key implementation policies beneficial to both the U.S. and Indian Nations internally and externally can be built.

In appearing before the Committee today, I was asked to comment on four basic questions:

Question 1. What's next now that there is a U.N. Declaration on the Rights of Indigenous Peoples?

Answer. The United States should adopt policies and enact legislation as necessary to effectuate the principles enunciated in the Declaration, particularly those relating to free, prior, and informed consent, protection of intellectual property rights.

Question 2. What is good domestic policy? What are the benefits to Tribal governments, communities and citizens?

Answer. Good domestic policy for implementing the UN Declaration would reflect the unique body of law policy, and political relationships with the indigenous peoples of the United States. Good domestic policy would also affirm tribal jurisdiction over their lands, resources, and peoples, instead of the mish-mash created by the social engineering of the federal courts, Congress, and the federal Administration. Implementation of the UN Declaration would demonstrate the commitment and leadership of the United States to the world community.

Question 3. How is it formulated?

Answer. Good domestic policy to implement the UN Declaration for application within the U.S. would be developed through government-to-government dialogue between Indian Nations. By "dialogue", I mean substantive discussion between sovereigns to resolve differences, not "consultation" which has been interpreted to enable the United States to unilaterally retain all decisionmaking power.

Question 4. What has not been addressed in the federal policy? How have Tribal efforts for economic development and commerce been impacted?

Answer. I am unaware of a federal policy that has been adopted to implement UNDRIP. In the United States, implementation of UNDRIP must occur within the historical context of treaties, reserved rights, and judicial decrees

However, it must be recognized and understood that despite its frequent protestations against other states' governments deem dismissive of human rights norms, the political, administrative, and legal arms of the United States government have kept American Indian nations in a state of perpetual dependency. Tribal communities suffer from a legacy of over a hundred and fifty years of political and economic oppression.

The long-term economic and social future of Indian nations is dependent on maintaining access to sufficient quantities of traditional foods and medicines both inside

and outside the boundaries of reserved territories. In accord with the Stevens' Treaties signed by Indian nations and ratified by the U.S. Senate, Indian nations reserved the right and privilege to hunt, fish, and gather resources to maintain tribal life ways. The United States Congress should in accord with Article 3 of these and similar treaties affirm the authority of Indian nations to regulate and manage tribal hunting and gathering activities to promote our social and economic well being implementing clauses in Article 24 and 26 of the UNDRIP. New legislation respecting these two Articles of UNDRIP and clauses contained in treaties concluded between Indian nations and the United States should bar federal, state, county and local governments from interfering with Indian nations' exercise of reserved rights.

The U.S. Senate should consider and enact legislation that ensures that all American Indians, Alaskan Natives and Native Hawaiians are able to access and benefit from financial and technical assistance in the future available to indigenous peoples from states' governments and multi-lateral agencies acting in support of indigenous peoples as a result of international cooperation and agreements thereby implementing Article 23 and Article 39 of UNDRIP.

For Indian nations of the U.S., UNDRIP's general principles must be implemented under conditions where lands and resources are held in trust for the benefit of Indians by the U.S. The trust status protects these resources from alienation to some degree, but it also imparts special fiduciary obligations on the U.S. which increase transaction costs for both the beneficiaries and trustee, and imposes difficult challenges for securing loans to finance economic development activities.

Lastly, the jurisdictional morass resulting from social engineering by Congress and the Courts must be rectified. Tribal sovereign powers need to be affirmed. Jurisdictional conflicts and voids have created a no-man's land on reservations where the power to govern depends on the type of land ownership, the nature of offenses, and the tribal affiliation of the offenders. For regulation of commerce, jurisdictional problems have increased the difficulty of controlling development and business activities within reservation boundaries and created a difficult social environment that has rendered tribal members extremely vulnerable to victimization by drug and alcohol abuse and domestic violence.

Tribal concerns and views on Commerce, Environmental Stewardship on federal lands and Tribal Economic Development and Trade.

The Senate with the free, prior and informed consent of affected Indian governments should recognize the right of Indian nations to freely trade and conduct commerce without interference by U.S. government agencies provided that Indian nations conduct trade and commerce consistent with agreed international trade and commerce statutes implementing clauses in Article 21 (2), Article 36 and Article 37 of UNDRIP.

Regarding environmental stewardship, there is a long, sad history of Tribal needs and interests falling victim to policy and economic decisions made by federal and state jurisdictions. Tribes are suffering environmental injustice as their rights to self-determination over their lands, resources, and peoples have often been sacrificed to benefit non-tribal interests—for instance tribal prerogatives are being denied to compensate for environmental degradation caused by non-tribal development. At Quinault, because of extensive and intensive non-Indian logging of old growth forests, species like the marbled murrelet and northern spotted owl have become listed under the ESA. This has led to the imposition of restrictions on tribal activities, resulting from the loss of tens of millions of dollars in stumpage revenues, loss of businesses and jobs in the community, and devaluation of trust assets. An additional concern is that our reservation homeland that was set aside for our exclusive use and occupancy is becoming a refuge for ESA-listed species because of continuing environmental deterioration elsewhere. Displacement of environmental costs onto tribes is not limited to reservation lands. Desires to provide additional protection for non-Indian lands in the Chehalis Basin, dams and levees are being proposed without adequate consideration to the threats that these structures pose to habitat critical to sustaining treaty-protected fishery resources that are central to QIN's economy and way of life.

This travesty must end. Implementation of UNDRIP should include provisions that protect territorial dominion of Tribal governments over their lands and resources.

Finally, I wish to recommend that the U.S. Senate consider and enact an appropriation of \$12 million annually for ten years to support American Indian, Alaskan Native and Native Hawaiian delegations to participate in international conferences, workshops, seminars, and intergovernmental consultations as an International Development initiative promoting indigenous peoples' dialogue and agreements advancing trade, commerce, and improved understanding concerning intellectual prop-

erty rights, biological diversity, climate change, and opportunities for economic cooperation thus implementing clauses in Article 3, Article 18, Article 19, Article 23, Article 29 (1) of UNDRIP.

Many of these recommendations align with consensus views of indigenous nations and organizations in the international community. I have attached two documents which lend context. Annex A is a joint statement entitled: "Implementation of the UN Declaration on the Rights of Indigenous Peoples: Positive Initiatives and Serious Concerns" and Annex B entitled: "Open-Ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization."

I thank the Committee on Indian Affairs for its invitation to provide testimony regarding implementation of the clauses and sections of UNDRIP for consideration.

The CHAIRMAN. Thank you so much. And now we will receive the statement from Mr. Ettawageshik.

**STATEMENT OF FRANK ETTAWAGESHIK, EXECUTIVE
DIRECTOR, UNITED TRIBES OF MICHIGAN**

Mr. ETTAWAGESHIK. Thank you, Mr. Chairman, Senator Udall. I would like to acknowledge all of the folks that are here that are listening and that are part of this, those who will read this record and who are concerned about these issues, and who are working toward the implementation of this Declaration and working toward the goodwill of people all over the earth.

There have been a number of different comments that have been made. One of them was talking about what is happening in other places in the world and what is happening with indigenous peoples. And there are, I have more detail in my written testimony, but there are several documents that I have attached to that written testimony that demonstrate and talk about some of these things and what has been happening.

The first one that I talk about is the United League of Indigenous Nations Treaty. There are in excess of 80 indigenous nations that are signers to this at this point. And there are Maori from New Zealand area, from Australia, aborigines, First Nations from Canada, and tribes from the United States. We have interests from a number of other areas, of people who are interested in this.

This is working toward the idea of finding ways to share with each other and to strengthen each other's endeavors in a variety of different areas, but mostly just to work together with each other. These are things that, there have been a lot of attempts at this at various times in the past. This is another one, and it is in light of a lot of the discussion that was occurring at the UN. We actually signed this treaty prior to the time when the Declaration had passed. And yet it was all part of that process in a way.

A second one is the statement from the first Roundtable for the World Parliament of Indigenous Peoples from this last January. I attended this in India, where representatives of the native indigenous nations all across the continental United States, Native Alaskans, Native Hawaiians, people from a variety of other indigenous nations all over the earth that attended. It was in the idea of working toward implementation, but in an international way.

Another one is the Message of the Living Spirit of the Convening of Indigenous Peoples for the Healing of Mother Earth at the cultural territory of the Maya. It is quite a big title, takes the full top of the page. You get a pretty good idea what this is. This was put together by North American indigenous people from Mexico, Can-

ada and the United States. This was done in Palenque, in the State of Chiapas, in Mexico. We had nearly 150 representatives who put this document together, talking about maintaining balance in the direction, the four direction teachings, maintaining of balance between earth, water, fire and wind. And the things that need to be done to protect, the document goes into some detail about assessing the strengths and our traditional teachings in these areas.

But also the disharmony that is occurring in each of these directions and the disharmony that is threatening our very existence on earth, addressing some of the points that President Sharp talked about, in terms of, it is important for us to be at the table. We have some very important teachings that can inform the process.

Other documents are the Mystic Lake Declaration, which came from the Native Peoples Native Homelands Climate Change Workshop II. NASA was one of the sponsors of this, as well as others who were people from all over the continent who came to that. And this was putting together a statement that would help inform the process in Copenhagen. Once again, talking about the harmony and disharmony and things that were there. There are some very strong things that come out of that.

And the last document that I have is the Tribal-State Climate Accord in the State of Michigan, where the tribal governments and the State of Michigan have signed an accord on how we are going to be working on implementing the discussions to deal with the issues that come relative to climate.

These all have two major things that they are dealing with. They are dealing with environmental traditional knowledge and how that relates to climate. And they are dealing with inherent sovereignty, and they are making the statement that as indigenous peoples, we have this inherent sovereignty that is, no one can give you sovereignty. You are either sovereign or you aren't.

The indigenous peoples, when you have the recognition process, for instance, which is one of the areas that I gave testimony on here before this Committee, in a previous hearing, the problem that comes up is that we often, the system seems to look at this as if you are looking at a people and you are either, you are going to decide whether you are going to grant them sovereignty.

But that isn't the case. It is a case of deciding whether you are going to have diplomatic relations with this sovereign entity. You have to decide that. I don't think that, the process has not been one that looks at this as a two-way street. Frankly, it needs to. In light of the Declaration, I think we need to review all of those things.

To conclude, I am calling for, as well as other people have called for this, is that there needs to be a comprehensive review of existing United States laws and relationships with tribal nations. But this needs to be done carefully and thoughtfully, but it needs to include all parties that are affected. A special joint commission of the U.S. and tribal nations should be created and charged with this review, creating a record that will inform the process of implementation.

Indigenous peoples' knowledge, the traditional teachings guide us in our relationship with our mother, the earth. We know that we must respect the forces of nature. We must seek balance in our lives and communities and nations. We must consider the con-

sequences of our actions through the coming seven generations. We have gifts, knowledge, traditions and a way of life that has been handed down from the preceding generations. These gifts not only benefit our own peoples, they also enrich and provide guidance for the preservation of all humankind. We seek the strength and wisdom to do our part to continue this sacred responsibility.

I thank you for the opportunity to provide this testimony. I would be glad to answer any questions when the time comes. Thank you.

[The prepared statement of Mr. Ettawageshik follows:]

PREPARED STATEMENT OF FRANK ETTAWAGESHIK, EXECUTIVE DIRECTOR, UNITED TRIBES OF MICHIGAN

Introduction

Aanii. Pipigwa ododem. Naakwegeshik n'dizhnikaz. Waganakising n'doonjibaa. (Hello. Sparrow Hawk is my clan. Noon Day in my name. I'm from the place of the Crooked Tree.) I live near Harbor Springs, Michigan in the Odawa homeland of Waganakising. I want to acknowledge the Elders across Indian Country who have maintained our traditional ways and shared with us the knowledge, strength and guidance to help us to live in a good way.

Thank you for the invitation to give testimony today before the Senate Committee on Indian Affairs. Over the past 20 years I've been privileged to serve my tribe, the Waganakising Odawak (Little Traverse Bay Bands of Odawa Indians of Michigan), in both elected and appointed office. After leaving the office of Tribal Chairman in 2009, I became the Executive Director of the United Tribes of Michigan, a position in which I still serve. I also serve as the co-chair of the National Congress of American Indians' Federal Recognition Task Force. In this capacity on Wednesday, November 4, 2009, I presented the testimony on behalf of the National Congress of American Indians at an oversight hearing on the federal recognition process before this Committee.

During my tenure as a Tribal Chairman, I attended several State Department meetings with tribal leaders regarding the negotiation for the proposed United Nations Declaration on the Rights of Indigenous Peoples (Declaration). I considered this work to be of the highest importance and was disappointed when the United States did not vote in the affirmative when the final declaration was considered by the United Nations in September 2007. Many tribal citizens and leaders throughout Indian Country made repeated and consistent efforts to encourage the United States to reconsider this position and to endorse the Declaration. Meanwhile, the three other Nation States who voted no, one at a time, changed their positions over the intervening years. And then, in December 2010, we were excited to hear President Obama indicate that after careful consideration the position of the United States was changed.

The lengthy and difficult process by which this Declaration was negotiated and approved by the Nation States of the world gives indication of the ongoing complexity of Indigenous Peoples' positions within diverse governing systems of the world nations. The Indigenous Peoples' place in the unfolding history of human development is one of significant struggle against oppression, exploitation, genocide, and marginalization.

While there are myriad ramifications for all parties concerned in the implementation of the provisions of the Declaration, in this testimony I will be mainly focused on the issues of recognition of Indigenous Peoples and the collective challenge facing humankind in dealing with our changing climate.

Federal Recognition

The Declaration acknowledges indigenous peoples and outlines standards which the world community of Nation States believes that the member nations should uphold in their relationships with Indigenous Peoples. In the United States Constitution North America's indigenous peoples are referred to as Indian Tribes whose existence predates that of the United States itself. These Indian Tribes are nations with inherent sovereignty with our own laws and customs. By recognizing or acknowledging a tribal nation the U.S. government is not creating a nation or sovereign entity. The U.S. government is merely recognizing an already existing tribal nation. No one can give sovereignty to a nation. A nation or entity either is sovereign or it is not.

It is the responsibility of each sovereign to negotiate the acceptance of its sovereignty by the other sovereigns with whom it interacts. Tribal nations, like all the world's nations, must constantly negotiate the acceptance of their sovereignty with each other and with other national governments in a continually changing world.

Indigenous Peoples have banded together with each other in support of this negotiation for the acceptance of their sovereignty. A couple of examples are the United League of Indigenous Nations Treaty (ULIN) and the World Parliament of Indigenous Peoples, although there are many other organizational efforts.

The ULIN Treaty has a growing number of Indigenous Peoples as signers, currently numbering in excess of 80. These signatories are so far to date from Indigenous Peoples and Nations who are located within the Nation States of Australia, New Zealand, Canada and the United States. The opening principles within the treaty include that *"The Creator has made us part of and inseparable from the natural world around us . . ."* and that the *"Political, social, cultural and economic relations between our Indigenous Nations have existed since time immemorial and our right to continue such relationships are inseparable from our inherent Indigenous rights of nationhood. Indigenous Peoples have the right of self-determination and, by virtue of that right, our Peoples freely determine our political status and freely pursue our social, cultural and economic development."* (copy of treaty attached)

Booshakti Kendra (Mother Earth Center) near Tumkur, India, was the location for the First Roundtable discussing the creation of the World Parliament of Indigenous Peoples on the 7th through the 10th of January 2011. Thirty-nine representatives of Indigenous Peoples from around the world held three days of discussions and ceremonies, issuing a statement that said, in part,

"The unrelenting assault on the cultures, histories and dignity of the Indigenous Peoples and the living Universe must be understood and responded to creatively by Indigenous Peoples themselves. The First Round Table of the World Parliament of Indigenous Peoples asserts that while we recognize our cultural differences, we simultaneously and synergistically gather together our common cultural ethics and ancestral understandings toward the fulfilment of our self-assertion, self-actualization, self-determination, sovereignty and ultimately, our transformation. These at once ancient and contemporary strengths will enable us to move within the formation of nation-states within which we find ourselves, transforming them in ways that embody Indigenous ethics of respect, relationship and reciprocity for Indigenous communities, along with all other peoples, particularly marginalised and/or excluded communities. " (copy of full statement attached)

In the United States, the U.S. Supreme Court has grappled with the issues relating to the Indian Tribes and has made many rulings that govern the relationship of the U.S. government and its political subdivisions with the Indian Tribal Nations. The Constitution and court rulings however do not direct the internal sovereignty and affairs of the Tribal Nations or limit that sovereignty. These rulings do, however, make the exercise of sovereignty by a Tribal Nation more difficult by placing limits within U.S. law on federal, state and local governments in dealing with tribal issues.

There are 565 federally recognized Indian Tribal Nations in the U.S. There are many unrecognized sovereign Tribal Nations not counted in this number who are seeking acknowledgement of federal/tribal relations. The manner in which the United States has been "negotiating" its acceptance of these Tribal Nations has been a process that is cumbersome, expensive, demeaning, excessively lengthy, and filled with contradictions. The process takes so long that this alone creates an injustice not in keeping with the Declaration. The Declaration acknowledges that whether federally recognized or not, the U.S. and all world nations have responsibilities, standards for action, and ethical duties to respect Indigenous Peoples rights and existence.

The U.S. recognition process assumes that recognition is a one-way arrangement when actually it is an acknowledgment of a two-way relationship. Both parties have rights, responsibilities and duties in the maintenance of this relationship. The Declaration outlines parameters for this relationship that were previously not commonly utilized. Implicit within the Declaration is the expectation that all Indigenous Peoples can expect and demand that their inherent rights are respected in their relations with Nation States.

Climate Change

The traditional knowledge held by the indigenous peoples of the world, and within the United States, is a vast reservoir of teachings and lore that contains within it much that is needed as we collectively face an uncertain future, filled with a rapidly

changing climate, rising sea levels, and cataclysmic natural disasters. This uncertainty is having, and will continue to have, significant effects within individuals, families, communities, nations and across the entire world.

Indigenous Peoples from around the world have been preparing for dealing with these changes. In 2008, in Palenque, Mexico, the Convening of Indigenous Peoples for the Healing of Mother Earth was held with nearly 150 representatives from all across North America. Using our traditional knowledge and teachings a document was drafted outlining the imbalance that Indigenous People feel in the Earth today and issuing a warning of the dire consequences humankind is facing because of this imbalance (*copy attached*).

In 2009, at Prior Lake, Minnesota, the Native Peoples Native Homelands Climate Change Workshop II was held. The result was the Mystic Lake Declaration the intent of which was to inform the discussions at the 2009 Copenhagen Climate Summit. In this Declaration Native Peoples stated:

"We hereby declare, affirm, and assert our inalienable rights as well as responsibilities as members of sovereign Native Nations. In doing so, we expect to be active participants with full representation in United States and international legally binding treaty agreements regarding climate, energy, biodiversity, food sovereignty, water and sustainable development policies affecting our peoples and our respective Homelands on Turtle Island (North America) and Pacific Islands.

We are of the Earth. The Earth is the source of life to be protected, not merely a resource to be exploited. Our ancestors' remains lie within her. Water is her lifeblood. We are dependent upon her for our shelter and our sustenance. Our lifeways are the original "green economies." We have our place and our responsibilities within Creation's sacred order. We feel the sustaining joy as things occur in harmony. We feel the pain of disharmony when we witness the dishonor of the natural order of Creation and the degradation of Mother Earth and her companion Moon." (see attached copy)

The North American tribal nations who reside within the territory of the United States are among the first in the U.S. to directly feel the impacts of the changing climate just as around the world, indigenous peoples are today and will continue to be the earliest and most severely impacted. In the arctic whole seaside native villages are threatened as erosion from rising waters and melting permafrost combine in a relentless process that is causing them to be destroyed. The Indian Tribal Nations along the coast of the Gulf of Mexico have suffered loss of land, resources, heritage sites, and have suffered severe economic hardship due to storm erosion and rising ocean levels.

Across the whole United States tribal nations' physical, social, emotional and spiritual environments are under attack by outside pressures which now include the changing climate which is adjusting the habitat around us. In the past when the climate changed we were free to move with the changes, but today we are for the most part fixed in place. This will cause our cultures to have to adapt in ways that we have never before had to face.

Tribal Nations need to have access to adequate resources to work with each other and with the U.S. and state governments to help mitigate the negative impacts being caused by this changing climate. There are two ways that this can be accomplished. One is to remove restrictions on Tribal Nations that make it difficult for us to help ourselves. Better access to capital and economic development opportunities is needed. The ability to exercise our sovereign rights to regulate and develop our own lands without excessive U.S. government oversight and regulation is long overdue.

The second way to help Tribal Nations is to adequately fund existing programs that are used by tribes to prepare for the climate challenges that we are facing. Equity in funding opportunities to create and coordinate climate planning amongst our tribal nations and with other governments around us is essential.

In some areas of the country several steps have already been taken. In Michigan for example, I was appointed to represent tribal interests on the Michigan Climate Action Council. The resulting Climate Action Plan that the Council presented to Michigan's governor contained several tribally specific recommendations including the negotiation of a Tribal State Climate Accord. This has been completed and adopted (*see attached copy*).

Through the provisions of this accord, twice yearly staff level meetings among state and tribal officials are held to discuss common issues in dealing with the changing climate. In at least one other state, tribal interests were recognized in the adoption of a Climate Action Plan.

Conclusion

To guide the implementation of the Declaration's provisions a comprehensive review of existing United States laws and relationships with Tribal Nations needs to be begun. This needs to be done carefully and thoughtfully including all parties which are affected. Land uses, regulatory systems, territorial jurisdiction, agricultural development, and disaster preparedness and relief are just a few of the areas for review. A special joint commission of the U.S. and Tribal Nations should be created and charged with this review creating a record that will inform the process of implementation.

Indigenous Peoples traditional teachings guide us in our relationship with our Mother the Earth. We know that we must respect the forces of nature, we must seek balance in our lives and communities and nations, we must consider the consequences of our actions through the coming seven generations. We have gifts, knowledge, traditions and a way of life that has been handed down from the preceding generations. These gifts not only benefit our own peoples, they also enrich and provide guidance for the preservation of all humankind. We seek the strength and wisdom to do our part to continue this sacred responsibility.

I thank the Committee for its consideration of this testimony.

Attachments



UNITED LEAGUE OF INDIGENOUS NATIONS TREATY

PREAMBLE

We, the signatory Indigenous Nations and Peoples, hereby pledge mutual recognition of our inherent rights and power to govern ourselves and our ancestral homelands and traditional territories. Each signatory nation, having provided evidence that their respective governing body has taken action in accordance with their own custom, law and or tradition to knowingly agree to and adopt the terms of this treaty, hereby establish the political, social, cultural and economic relations contemplated herein.

PRINCIPLES

Recognizing each other as self-governing Indigenous Nations, we subscribe to the following principles:

1. The Creator has made us part of and inseparable from the natural world around us. This truth binds us together and gives rise to a shared commitment to care for, conserve, and protect the land, air, water and animal life within our usual, customary and traditional territories.
2. Our inherent customary rights to self-governance and self-determination have existed since time immemorial, have been bestowed by the Creator and are defined in accordance with our own laws, values, customs and mores.
3. Political, social, cultural and economic relationships between our Indigenous Nations have existed since time immemorial and our right to continue such relationships are inseparable from our inherent Indigenous rights of nationhood. Indigenous Peoples have the right of self-determination and, by virtue of that right, our Peoples freely determine our political status and freely pursue our social, cultural and economic development.
4. No other political jurisdiction, including nation states and their governmental agencies or subdivisions, possess governmental power over any of our Indigenous nations, our people and our usual, customary and traditional territories.
5. Our inherent, aboriginal control and enjoyment of our territories includes our collective rights over the environment consisting of the air, lands, inland waters, oceans, seas, sea ice, flora, fauna and all other surface and sub-surface resources.
6. Our Indigenous rights include all traditional and ecological knowledge derived from our relationship with our lands, air and waters from time immemorial, the exercise of conservation practices, traditional ceremonies, medicinal and healing practices and all other expressions of art and culture.

GOALS

This Treaty is for the purpose of achieving the following goals:

1. To establish supportive bonds among signatory Indigenous Nations in order to secure, recover, and promote, through political, social, cultural and economic unity, the rights of all our peoples, the protection and recovery of our homelands and for the well-being of all our future generations.
2. To establish a foundation for the exercise of contemporary Indigenous nation sovereignty, without regard to existing or future international political boundaries of non-Indigenous nations, for the following purposes: (a) protecting our cultural properties, including but not limited to sacred songs, signs and symbols, traditional ecological knowledge and other forms of cultural heritage rights by collectively affirming the principle that our own Indigenous laws and customs regarding our cultural properties are prior and paramount to the assertion of any other laws or jurisdiction including international bodies and agencies, (b) protecting our Indigenous lands, air and waters from environmental destruction through exercising our rights of political representation as Indigenous nations before all national and international bodies that have been charged, through international treaties, agreements and conventions, with environmental protection responsibilities, (c) engaging in mutually beneficial trade and commerce between Indigenous nations and the economic enterprises owned and operated collectively by Indigenous peoples and by individual citizens of our Indigenous nations, and, (d) preserving and protecting the human rights of our Indigenous people from such violations as involuntary servitude, human trafficking, or any other forms of oppression.
3. To develop an effective and meaningful process to promote communication and cooperation among the Indigenous Nations on all other common issues, concerns, pursuits, and initiatives.
4. To ensure that scholarly exchanges and joint study on strategies of self-determination are undertaken by Indigenous scholars.

MUTUAL COVENANTS

We, the signatory Indigenous Nations, are committed to providing the following mutual aid and assistance, to the best of our ability and in accordance with our own prior and paramount Indigenous laws, customs and traditions:

1. Exchanging economic, legal, political, traditional and technical knowledge regarding the protection of Indigenous cultural properties.
2. Collaborating on research on environmental issues that impact Indigenous homelands, including baseline studies and socio-economic assessments that consider the cultural, social and sustainable uses of Indigenous Peoples' territories and resources.
3. Participating in trade and commerce missions to lay a foundation for business relations and the development of an international, integrated Indigenous economy, and

Each signatory Indigenous Nation shall:

1. Appoint a coordinator or responsible official for Treaty matters;
2. Identify and establish an inter-Nation coordination office and communication network to assist in assembling data, information, knowledge and research needed to effectively address substantial issues of common concern;
3. Coordinate statements of policy and information on Treaty matters, especially information to be disseminated to the media;
4. Participate in periodic reviews and strategy planning sessions as needed.

EFFECTIVE DATE

The effective date of this Treaty is August 1, 2007.

RATIFICATION

Following the effective date of this Treaty, any other Indigenous Nation may ratify this Treaty at a meeting of the United League of Indigenous Nations. Ratifying Indigenous Nations may attach explanations or clarifications expressing their respective cultural understandings associated with the provisions of the Treaty through a Statement of Understandings which must be consistent with the spirit and intent of the Treaty.

Carolyn Jefferson
Lummi Nation

Chief Janet Carabonin X
Sucker Creek First Nation 150 A

Aroha Te Pareake Mead
Te Runanga O Ngati Awa

Dea Bero
Ngarrindjeri Nation

Andrew Brown
Douglas Village of the Tingit Nation

Michelle Maud
Confederated Tribes of the Colville Reservation

Ken Aklu
Akia' Native Community

Robah Deeb
We Wai Kai Nation

Debbie Wachendorf

MAKATI TRIBE

Robert Sam, Chief
Songhees Nation

Clivia Au
Hoh Indian Tribe

STATEMENT FROM THE FIRST ROUNDTABLE FOR THE WORLD PARLIAMENT OF
INDIGENOUS PEOPLES, 2011 (BOOSHAKTHI KENDRA, ¹ TUMKUR, INDIA)

We, 39 Indigenous delegates from 10 countries who attended the First round Table of the World Parliament of Indigenous Peoples from 07 to 10 January 2011 at the first ever Dalit Ashram, Booshakthi Kendra (1), Tumkur in India, make the following Statements.

Preamble

Today the world is in need of Indigenous Peoples to ensure its survival into the future. The Indigenous Peoples of the world have sustained life with vibrancy, despite thousands of years of assault on their dignity and life-ways by dominant and colonial powers. The inclusive worldviews of the Indigenous Peoples have inherent capacity of providing the critical values and ethics, understandings, processes and protocols of respect and reciprocity, which unfold in ways that include relationship with all of life, ensuring that everyone is valued for their own unique gifts and contributions, which is the essence of real leadership and governance.

The unrelenting assault on the cultures, histories and dignity of the Indigenous Peoples and the living Universe must be understood and responded to creatively by Indigenous Peoples themselves. The First Round Table of the World Parliament of Indigenous Peoples asserts that while we recognize our cultural differences, we simultaneously and synergistically gather together our common cultural ethics and ancestral understandings toward the fulfilment of our self-assertion, self-actualization, self-determination, sovereignty and ultimately, our transformation. These at once ancient and contemporary strengths will enable us to move within the formation of nation-states within which we find ourselves, transforming them in ways that embody Indigenous ethics of respect, relationship and reciprocity for Indigenous communities, along with all other peoples, particularly marginalised and/or excluded communities. The historic First Round Table in Tumkur, India has been held with the purpose of forming a World Parliament of Indigenous Peoples, which will provide an alternative model of leadership, protocols and understandings, envisioning and expanding into a future in which all the world's children have the possibility of living healthy, happy and fulfilled lives, secure in their identity, strong in their culture, proud of who they are, and able to carry themselves with honour, respect and dignity into our collective future.

Statements

1. Humanity has the opportunity to benefit and grow from the collective spiritual strengths that arise in the global spirit of Indigenous Peoples and have been honed in their struggles.

2. The mindless exploitation of the cosmos in its totality poses a serious problem to the Indigenous Peoples, as we consider Earth as our Mother and we have lived in harmony with nature for millennia. Any threat to the Earth and other planets is a simultaneous and inseparable threat to the existence of Indigenous Peoples. Our suffering has been inextricably intertwined with the sufferings of the cosmos. The World Parliament of Indigenous Peoples, when it becomes a reality in world history will become a veritable mouthpiece of the peoples of the world.

3. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples signals a commitment to Indigenous Peoples that has not been much demonstrated to this point.

4. Further, this adoption shows that the time has come for Indigenous Peoples to unite in collective action aimed at creating benefits for Indigenous communities and the world at large.

5. The formation of indigenous parliaments and indigenous political entities will facilitate this unity, as well as facilitate collaboration, discussion, decisionmaking, monitoring roles and support for Indigenous communities and individuals.

6. We see merit in developing closer ties among the political entities of Indigenous Peoples. We are confident that our knowledge, experience, and worldviews can be valuable resources in addressing common challenges for human beings, animals and plants and in assuring our survival. We see these possibilities as both opportunity and responsibility.

7. In anticipation and preparation for the United Nations World Conference on Indigenous Peoples in 2014, we invite indigenous parliaments, governments, and

¹Booshakthi Kendra is the first ever Dalit Ashram in India initiated by Jyothi and Raj in Tumkur, India. It means Mother Earth Centre. It has the avowed purpose of being the spring-board of learning, indigenous spirituality, indigenous philosophy and through these learning also generate liberative action for indigenous and other excluded peoples of the world.

other indigenous political entities to join the efforts in recognizing our full and just participation in the global political arena.

8. The role of the World Parliament will also be to raise awareness in the dominant world about the true nature and value of indigeneity. The world will then realize that Indigenous Peoples have the answer to most problems that beset the world that is groping in darkness today.

The following delegates took part in the historic First Round Table of the World Parliament of Indigenous Peoples in Tumkur, India.—

1. Ms. Ang Dawa Sherpa—Nepal
2. Ms. Shanti Jirel—Nepal
3. Mr. Walter Hahn—Germany
4. Ms. Heidi Oline Salmi—Sapmi, Norway
5. Mr. Jarle Jonassen—Sapmi, Norway
6. Ms. Maria Therese Aslaksen—Sapmi, Norway
7. Mr. Rune Fjellheim—Sapmi, Norway
8. Ms. Kirsten Anne Guttorm—Sapmi, Norway
9. Ms. Silja Somby—Sapmi, Norway
10. Ms. Donna Ngaronoa Gardiner—New Zealand
11. Mr. Tiopira Porutu Keith McDowell—New Zealand
12. Mr. Charles Royal—New Zealand
13. Ms. Trish Johnston—New Zealand
14. Ms. Monica Royal—New Zealand
15. Mr. Kerry Laiana Wong—Hawaii
16. Ms. Eomailani Kukahiko—Hawaii
17. Ms. Margaret Jane Maaka—Hawaii
18. Ms. Darlene Hoskins McKenzie—Australia
19. Ms. Debrah Ann Hocking—Australia
20. Mr. Lenzerini Federico—Italy
21. Mr. D Thangaraj IAS—India
22. Ms. Rose Mary—Nagaland, India
23. Mr. Anil Gaikwad—India
24. Dr. Ruth Manorama—India
25. Dr. Nara Singh—Manipur, India
26. Mr. Jon Ross—Alaska
27. Ms. Leandra Ross—Alaska
28. Ms. Jessica Ross—Alaska
29. Ms. Ruby Shannon Vail—USA
30. Mr. John Vail—USA
31. Ms. Amanda Holmes—N. America
32. Ms. June Lorenzo—N. America
33. Mr. Frank David Ettawageshik—N. America
34. Ms. Rosalie Little Thunder—N. America
35. Mr. Tupac Enrique—N. America
36. Mr. V B Rawat—India
37. Ms. Jyothi—India
38. Mr. M C Raj—India
39. Ms. Arul Kani—India

MESSAGE OF THE LIVING SPIRIT OF THE CONVENING OF INDIGENOUS PEOPLES FOR
THE HEALING OF MOTHER EARTH (2008—CULTURAL TERRITORY OF THE MAYA)

Dear Friends,

It is a great honor to share the “*Message of the Living Spirit of the Convening of Indigenous Peoples for the Healing of Mother Earth*,” the outcome of the Convening that took place in the Cultural Territory of the Maya in Palenque, Chiapas, Mexico on March 10–13, 2008. At the direction of the participants at this gathering, this message is a Call To Action to Indigenous peoples, and to all peoples of the world.

The *Convening for the Protection of Mother Earth* was planned by and for Indigenous peoples from North America to bring together Indigenous leaders, including spiritual and traditional healers, elders, wisdom keepers, and practitioners, to address the need for immediate intervention and action, based upon our original teachings, in order to ensure a healthy future for coming generations. We recognize that our current and future actions must not be based upon the same worldview that has brought such global destruction to Mother Earth. We must reclaim and revitalize the wisdom passed on to us from our Ancestors about how to be responsible to each other and to the Natural World.

This Message was created through ceremony and prayer, but it is up to each of us to find ways to give this Message life and meaning as we all take steps to protect the Natural World. It is intended to be a living document that serves as a source of inspiration to Indigenous peoples, governments, and civil society, to take our responsibilities to protect Mother Earth seriously, and to provide some guidance for moving forward.

Finally, we wish to acknowledge the participation and deliberations of the Indigenous peoples, representing Indigenous nations and communities from throughout North America, and gratefully thank the following organizations for their generous contributions and support including: U.S. Environmental Protection Agency, Health Canada, The Mexican Secretariat of Environment and Natural Resources, The Mexican National Commission for the Development of Indigenous Peoples, and the Commission for Environmental Cooperation.

Please visit the *Convening for the Protection of Mother Earth* website for further information at: www.indigenouconvening.com.

Introduction

Having been welcomed to convene in ceremony at the sacred site of Palenque (Cerro de Estacas) to heed the call of Mother Earth and honor the sacred elements of water, air, earth and fire in unity as Indigenous Peoples of Lak β Lum upon the traditional territory of the Maya People on the 10–13 of March 2008, we commit in unity to the Message of the Living Spirit.

We the Indigenous Nations, Peoples, pueblos, communities, villages, situated within the geopolitical boundaries claimed by the nation-states of Mexico, Canada, and the United States hereby make this declaration and urgent message to the world on the basis of our spirituality and the natural biological Laws of Life on Mother Earth, the Sacred Life-Giver. It is our inherent birthright and responsibility as the original free and independent Peoples of Turtle Island to care for Mother Earth in keeping with our Original Instructions from Creation.

These natural laws are inclusive of Honor, Respect, Love, Compassion, Peace, and Friendship. It is in keeping with these natural laws and Indigenous values that the traditional knowledge and wisdom bequeathed to us by our ancestors, and carried today by our Elders, teaches us how to live in balance with the Four Sacred Elements of Life: Earth, Water, Air, and Fire. We are the guardians of these elements of Life.

Fire is meant to ignite and unite the spirit of humanity. Water is the life blood of all living things. Air is the sacred breath of life. Earth is the Mother that nurtures us all. Beyond the tangible aspect of our relationships with all the sacred elements, there is intangible interaction. The role of the sacred elements is central in our customs, traditions, stories, songs, and dances.

The Indigenous prophecies foretell the urgent environmental crisis we face today. The Indigenous Peoples have the responsibility to provide our traditional knowledge to the world. The ancestral ways of Indigenous peoples have the power to heal our Mother Earth. We demand that the nation-state and state governments stop the destruction and violations against the four elements of Life.

Western legal and religious histories, philosophies and laws have totally disrupted our ways of life. Our traditional spiritual ways and knowledge systems honor the interconnections and interrelationships of the Web of Life, and sustain, not destroy Mother Earth.

Vision

As caretakers of Mother Earth, speaking with one spirit, one mind, one heart and as one family, utilizing the original teachings given to human beings by the Creator, we will restore balance and harmony to Mother Earth and all her children.

Guided by the wisdom and vision of our ancestors in the spirit world, elders, spiritual leaders and traditional and Indigenous community leaders, we understand the Natural Law given to us by the Creator guides our traditional way of life in harmony with all creation upon the land and waters of Mother Earth.

The Pain of Mother Earth

As the peoples of the land, we are the first to hear, see, feel, taste and spiritually sense the pain of Mother Earth. She is dying and we hear her cry. Her heart is wounded and her pain is our pain, her illness is our illness, our survival is dependent upon her survival.

As Indigenous peoples, we have a spiritual and familial relationship to the sacred elements of water, air, earth and fire, and understand their holistic and inseparable relationship with each other. Through the western claim of asserting ownership over these sacred elements their spiritual interdependence is being destroyed.

Water

Minan ja' Minan kuxtal—Without Water, There Is no life

The water represents the life-blood and the sustenance of all life. The purity and natural flow of water is necessary for maintaining the interdependent balance between all forms of life. Our sacred birthright includes the rivers, streams, natural springs, hot waters, lakes, underground aquifers, seas, bays, inlets, oceans, ice, snow, rain and all forms of and bodies of water.

Deforestation and the removal of flora and fauna have resulted in the destruction of water sources. Organic and inorganic waste, refuse, and industrial wastewater are dumped directly into rivers and water sources that people need for drinking. As a result of toxins and pollutants, and industrial wastes many sources of water are unfit to drink and lead to serious and deadly health problems for humans and other forms of life. Indigenous peoples are often in the situation of having to choose between thirst and the possibility of serious illness or death from drinking polluted and contaminated water.

Dams and hydroelectric projects pose a massive problem for the integrity of ecosystems and the ability of Indigenous Peoples to maintain their traditional ways of life, hunting, fishing, trapping, and harvesting. As a result of diversion and depletion of pristine water sources, many Indigenous Peoples do not have access to water. Regulatory frameworks also infringe upon Indigenous peoples' rights to, use of, and access to water. The privatization and commodification of water is a critical issue. No one owns water.

Air

The air is the Messenger that announces the rains, it is a voice of our ancestors, and it is the central element for the preservation of cultures. The main causes of air pollution are industrialization, militarization, electricity generation, energy generation from nonrenewable sources, means of transport and inadequate management of toxic wastes. This situation threatens the health of our ecosystems, putting life at risk. Air pollution caused by automobile exhaust, has great impacts on the respiratory health of all peoples, particularly in urban areas. The pollution carried by the wind from coal-fire plants emit toxins negatively impact peoples at great distances. The burning of oil, gas, and coal ("fossil fuels") causing the global warming is the primary source of human-induced climate change.

Earth

Our sacred lands are under siege. The Western world improperly asserts that they have a right to extract the natural resources from our lands and territories without regard for our rights. This extraction has left in its wake a legacy of contamination, waste and loss of life. Indigenous peoples are facing the negative impacts of pollution, mining, deforestation, logging, oil prospecting, dumping of toxic waste, genetic engineering, fertilizers and pesticides, and soil erosion, all of which contribute to a severe loss of biodiversity. All of these threaten food security, subsistence lifestyles, human health and our ability to sustain our peoples. Our peoples are suffering from high rates of cancers, diabetes, heart disease and other serious diseases previously unknown to our peoples. In the name of conservation of biodiversity, Indigenous Peoples have been displaced from our territories designated as protected areas. There is a direct correlation between the health of the land and the holistic health and well-being of the people. This has particular and significant impact on Indigenous Women—the rape and desecration of Mother Earth is reflected in what has happened to Indigenous Women.

Fire

The fire that sparks life is being disrespected by technology of the industrialized world that allows it to take life such as the fire in the coal-fired powered plants, the toxic waste incinerators, the fossil-fuel combustion engine and other polluting technologies that add to greenhouse gases, a primary cause of climate change. The abuse of the sacred element of fire conflicts with Indigenous knowledge and practices. Human beings are using fire in an exploitive, manipulative, destructive and deadly manner. The culturally inappropriate use of fire is manifested in the atomic bomb, military weaponry and warfare, nuclear power and radioactive waste, the extractive energy industries of coal, oil and gas, and the burning of forests and grasslands that result in the extinction of flora and fauna within our ancestral territories.

The Healing of Mother Earth

Based on our inherent sovereignty and consistent with our inherent birthright to self-determination in international law, including the United Nations Declaration on the Rights of Indigenous Peoples, we affirm our responsibility to protect water, air,

earth and fire. Because of our relationship with our lands, waters and natural surroundings since time immemorial, we carry the knowledge, ideas and solutions that the world needs today. We know how to live with Mother Earth because we are her children. We commit to sharing certain teachings of our peoples to all humanity so that they can find their original, sacred relationship to Mother Earth, Father Sky, and all Creation. It is our responsibility given to us by the Creator to speak for the plants, for the animals, and all life to bring their message to all of peoples and nations of the world.

Traditional knowledge can aid in providing accurate ecological baselines embedded in and carried in Indigenous languages, including in traditional names of places, stories and oral narratives that reveal the original roles of natural habitats as given to us by the Creator. These baselines are critical for societal adaptation to environmental change, land use change and climate change, as well as indigenous cultural survival in the face of these detrimental changes in the world we live in today.

Call to Action to Indigenous Peoples

Based on our inherent sovereignty and consistent with our right of self-determination in international law, we affirm our inherent birthright to water, air, earth and fire. We call upon our Indigenous brothers and sisters to fulfill our responsibilities bequeathed by our ancestors to secure a healthy environment for present and future generations. We know how to live with Mother Earth because we are her children. We are a powerful spiritual people. It is this spiritual connection to Mother Earth, Father Sky, and all Creation that the rest of the World must respect. Our extended family includes our Mother Earth, Father Sky, and our brothers and sisters, the animal and plant life, therefore, it is the responsibility given to us by the Creator to speak for the plants, for the animals, for the rest of Creation, for the future of all the children, for the future of Mother Earth and Father Sky. We commit to continue our traditional practices for the environment based on standards consistent with the Natural Laws of the Creator for the benefit of future generations.

We call upon all Indigenous Peoples to:

Honor and defend all the sacred elements by conducting their traditional ceremonies and prayers revitalizing and perpetuating traditional values and knowledge systems and applying them to today's realities. We the Indigenous Peoples at this Convening, offer to share the following gifts of knowledge through our own skills that have been developed and through proven best practices/successful indigenous practices or knowledge that have been successful:

- Develop recycling capabilities for plastic, paper, glass and metals in our own communities, ending the use of plastic;
- Exercise traditional ways of growing crops; and
- Plant more trees to clean the air and water, a holistic reforestation with endemic plants.
- Educate Indigenous Peoples and non-Indigenous people beginning with our children and including individuals, communities, governments, institutions and the media about the role of these sacred elements in our world and our livelihoods.
- Create and develop an Indigenous education circle without borders, based on traditional knowledge using appropriate tools of science to protect our sacred elements. This network can include traditional practices, research experience, development of curriculum for our children, and a library of knowledge that can be shared with all of our Peoples.
- Collaborate and organize events, gatherings and conferences for the protection of the sacred elements.
- Acknowledge the ancestral time in uniting “All Nations, All Faiths, One Prayer” on June 21st to pray for united healing.
- Assert and exercise our inherent, prior and collective rights to manage, maintain and protect our lands and territories.
- Express our full support for the existing Indigenous organizations and associations which are currently advocating for the protection, stewardship and sustainability of water as a resource and as a part of Indigenous identity, spirituality, culture and nationhood.
- There are numerous documents, resources, tools, instruments, treaties, agreements and other constructive arrangements that have been created by or in partnership with Indigenous Peoples. We encourage more Indigenous Peoples to create such tools in accordance with their respective customs, protocols and laws, to articulate, implement or enforce our inherent rights and in exercising

self determination. We also urge Indigenous Peoples to share such tools, skills, knowledge and resources with each other.

- Exercise the right of free, prior and informed consent to any actions that may affect their lands and territories.

Call to Action to the Global Community

Acknowledging the dignity of all life, peoples and nations, we call upon the global community to unite with Indigenous Peoples to learn the teachings and wisdom as bestowed to us by the Creator in order to heal Mother Earth. The realization of this Call to Action will only occur with the full, active and collaborative partnership of all peoples and nations. We call upon Leaders of all Nations of the World at all levels of decisionmaking, to accept responsibility for the welfare of future generations. Living by the traditional principles and values of Honor, Respect, Love, Compassion, Peace and Friendship, we call upon the Global Community:

International

- Fully implement the United Nations Declaration on the Rights of Indigenous Peoples.
- Protect Indigenous peoples from the negative impacts of trade agreements.
- Recognize the rights of Indigenous Peoples consistent with the United Nations Declaration on the Rights of Indigenous Peoples and other international law, in the implementation of international treaties, conventions and agreements relevant to the environment, trade, and human rights including:
 - Convention on Biological Diversity, including Articles 8(j) and 10.
 - United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol
 - International Labour Organization Convention (ILO) 107 and 169
 - Organization of American States
 - OAS Proposed Declaration on the Rights of Indigenous Peoples
 - Universal Declaration of Human Rights
 - International Convention on the Elimination of All Forms of Racial Discrimination
 - International Covenant on Economic, Social and Cultural Rights
 - International Covenant on Civil and Political Rights
 - Declaration on the Granting of Independence to Colonial Countries and Peoples
 - General Assembly resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resource”
 - Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

National

- Commit to the full implementation at the domestic level of the United Nations Declaration on the Rights of Indigenous Peoples.
- That all levels of nation-state and state governments live up to their commitments to Indigenous Peoples by recognizing our inherent rights, cultural rights and rights held pursuant to treaties, agreements and other constructive arrangements.
- Implement a system of legislation, regulation, fines or taxation for excessive use or abuse of any of the four sacred elements.
- Enter into a collaborative, and active partnership with Indigenous Peoples to protect, sustain and maintain sacred sites of Indigenous Peoples.
- Governments should guarantee the restructuring and repair of the damage done to the cultural patrimony and territory of Indigenous Peoples.

Non-Governmental and Civil Society

- Civil society and non-governmental organizations to involve and support Indigenous Peoples in the protection of our lands, territories and rights. This includes advocacy concerning any activity impacting the four sacred elements.
- Encourage civil society, and non-governmental organizations to respect and honor the roles and responsibilities of Indigenous Peoples in carrying out their mandates and roles;

Private Sector and State Corporations

- Indigenous laws governing the four sacred elements must be respected by the private sector, in addition to relevant international, and national laws that are consistent with the United Nations Declaration on the Rights of Indigenous Peoples in carrying out their business or projects.
- Ensure the free, prior and informed consent of Indigenous Peoples prior to commencing any undertaking which impacts the four sacred elements, including assessments or exploration, and involving the participation of governments if necessary.

Declaration

We, the Convening of Indigenous Peoples for the Healing of Mother Earth, support the spirit and intent of this message and send it out to all Indigenous peoples and to the World as a living document.

THE MYSTIC LAKE DECLARATION (FROM THE NATIVE PEOPLES NATIVE HOMELANDS CLIMATE CHANGE WORKSHOP II: *Indigenous Perspectives and Solutions*—Prior Lake, Minnesota—November 21, 2009

As community members, youth and elders, spiritual and traditional leaders, Native organizations and supporters of our Indigenous Nations, we have gathered on November 18–21, 2009 at Mystic Lake in the traditional homelands of the Shakopee Mdewakanton Dakota Oyate. This Second Native Peoples Native Homelands Climate Workshop builds upon the Albuquerque Declaration and work done at the 1998 Native Peoples Native Homelands Climate Change Workshop held in Albuquerque, New Mexico. We choose to work together to fulfill our sacred duties, listening to the teachings of our elders and the voices of our youth, to act wisely to carry out our responsibilities to enhance the health and respect the sacredness of Mother Earth, and to demand Climate Justice now. We acknowledge that to deal effectively with global climate change and global warming issues all sovereigns must work together to adapt and take action on real solutions that will ensure our collective existence.

We hereby declare, affirm, and assert our inalienable rights as well as responsibilities as members of sovereign Native Nations. In doing so, we expect to be active participants with full representation in United States and international legally binding treaty agreements regarding climate, energy, biodiversity, food sovereignty, water and sustainable development policies affecting our peoples and our respective Homelands on Turtle Island (North America) and Pacific Islands.

We are of the Earth. The Earth is the source of life to be protected, not merely a resource to be exploited. Our ancestors' remains lie within her. Water is her lifeblood. We are dependent upon her for our shelter and our sustenance. Our lifeways are the original "green economies." We have our place and our responsibilities within Creation's sacred order. We feel the sustaining joy as things occur in harmony. We feel the pain of disharmony when we witness the dishonor of the natural order of Creation and the degradation of Mother Earth and her companion Moon.

We need to stop the disturbance of the sacred sites on Mother Earth so that she may heal and restore the balance in Creation. We ask the world community to join with the Indigenous Peoples to pray on summer solstice for the healing of all the sacred sites on Mother Earth.

The well-being of the natural environment predicts the physical, mental, emotional and spiritual longevity of our Peoples and the Circle of Life. Mother Earth's health and that of our Indigenous Peoples are intrinsically intertwined. Unless our homelands are in a state of good health our Peoples will not be truly healthy. This inseparable relationship must be respected for the sake of our future generations. In this Declaration, we invite humanity to join with us to improve our collective human behavior so that we may develop a more sustainable world—a world where the inextricable relationship of biological, and environmental diversity, and cultural diversity is affirmed and protected. We have the power and responsibility to change. We can preserve, protect, and fulfill our sacred duties to live with respect in this wonderful Creation. However, we can also forget our responsibilities, disrespect Creation, cause disharmony and imperil our future and the future of others.

At Mystic Lake, we reviewed the reports of indigenous science, traditional knowledge and cultural scholarship in cooperation with non-native scientists and scholars. We shared our fears, concerns and insights. If current trends continue, native trees will no longer find habitable locations in our forests, fish will no longer find their streams livable, and humanity will find their homelands flooded or drought-stricken due to the changing weather. Our Native Nations have already disproportionately

suffered the negative compounding effects of global warming and a changing climate.

The United States and other industrialized countries have an addiction to the high consumption of energy. Mother Earth and her natural resources cannot sustain the consumption and production needs of this modern industrialized society and its dominant economic paradigm, which places value on the rapid economic growth, the quest for corporate and individual accumulation of wealth, and a race to exploit natural resources. The non-regenerative production system creates too much waste and toxic pollutions. We recognize the need for the United States and other industrialized countries to focus on new economies, governed by the absolute limits and boundaries of ecological sustainability, the carrying capacities of the Mother Earth, a more equitable sharing of global and local resources, encouragement and support of self sustaining communities, and respect and support for the rights of Mother Earth and her companion Moon.

In recognizing the root causes of climate change, participants call upon the industrialized countries and the world to work towards decreasing dependency on fossil fuels. We call for a moratorium on all new exploration for oil, gas, coal and uranium as a first step towards the full phase-out of fossil fuels, without nuclear power, with a just transition to sustainable jobs, energy and environment. We take this position and make this recommendation based on our concern over the disproportionate social, cultural, spiritual, environmental and climate impacts on Indigenous Peoples, who are the first and the worst affected by the disruption of intact habitats, and the least responsible for such impacts.

Indigenous peoples must call for the most stringent and binding emission reduction targets. Carbon emissions for developed countries must be reduced by no less than 40 percent, preferably 49 percent below 1990 levels by 2020 and 95 percent by 2050. We call for national and global actions to stabilize CO₂ concentrations below 350 parts per million (ppm) and limiting temperature increases to below 1.5°C.

We challenge climate mitigation solutions to abandon false solutions to climate change that negatively impact Indigenous Peoples' rights, lands, air, oceans, forests, territories and waters. These include nuclear energy, large-scale dams, geo-engineering techniques, clean coal technologies, carbon capture and sequestration, bio-fuels, tree plantations, and international market-based mechanisms such as carbon trading and offsets, the Clean Development Mechanisms and Flexible Mechanisms under the Kyoto Protocol and forest offsets. The only real offsets are those renewable energy developments that actually displace fossil fuel-generated energy. We recommend the United States sign on to the Kyoto Protocol and to the United Nations Declaration of the Rights of Indigenous Peoples.

We are concerned with how international carbon markets set up a framework for dealing with greenhouse gases that secure the property rights of heavy Northern fossil fuel users over the world's carbon-absorbing capacity while creating new opportunities for corporate profit through trade. The system starts by translating existing pollution into a tradable commodity, the rights to which are allocated in accordance with a limit set by States or intergovernmental agencies. In establishing property rights over the world's carbon dump, the largest number of rights is granted (mostly for free) to those who have been most responsible for pollution in the first place. At UN COP15, the conservation of forests is being brought into a property right issue concerning trees and carbon. With some indigenous communities it is difficult and sometimes impossible to reconcile with traditional spiritual beliefs the participation in climate mitigation that commodifies the sacredness of air (carbon), trees and life. Climate change mitigation and sustainable forest management must be based on different mindsets with full respect for nature, and not solely on market-based mechanisms.

We recognize the link between climate change and food security that affects Indigenous traditional food systems. We declare our Native Nations and our communities, waters, air, forests, oceans, sea ice, traditional lands and territories to be "Food Sovereignty Areas," defined and directed by Indigenous Peoples according to our customary laws, free from extractive industries, unsustainable energy development, deforestation, and free from using food crops and agricultural lands for large scale bio-fuels.

We encourage our communities to exchange information related to the sustainable and regenerative use of land, water, sea ice, traditional agriculture, forest management, ancestral seeds, food plants, animals and medicines that are essential in developing climate change adaptation and mitigation strategies, and will restore our food sovereignty, food independence, and strengthen our Indigenous families and Native Nations.

We reject the assertion of intellectual property rights over the genetic resources and traditional knowledge of Indigenous peoples which results in the alienation and

commodification of those things that are sacred and essential to our lives and cultures. We reject industrial modes of food production that promote the use of chemical substances, genetically engineered seeds and organisms. Therefore, we affirm our right to possess, control, protect and pass on the indigenous seeds, medicinal plants, traditional knowledge originating from our lands and territories for the benefit of our future generations.

We can make changes in our lives and actions as individuals and as Nations that will lessen our contribution to the problems. In order for reality to shift, in order for solutions to major problems to be found and realized, we must transition away from the patterns of an industrialized mindset, thought and behavior that created those problems. It is time to exercise desperately needed Indigenous ingenuity—*Indigenuity*—inspired by our ancient intergenerational knowledge and wisdom given to us by our natural relatives.

We recognize and support the position of the International Indigenous Peoples Forum on Climate Change (IIPFCC), operating as the Indigenous Caucus within the United Nations Framework Convention on Climate Change (UNFCCC), that is requesting language within the overarching principles of the outcomes of the Copenhagen UNFCCC 15th Session of the Conference of the Parties (COP15) and beyond Copenhagen, that would ensure respect for the knowledge and rights of indigenous peoples, including their rights to lands, territories, forests and resources to ensure their full and effective participation including free, prior and informed consent. It is crucial that the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is entered into all appropriate negotiating texts for it is recognized as the minimum international standard for the protection of rights, survival, protection and well-being of Indigenous Peoples, particularly with regard to health, subsistence, sustainable housing and infrastructure, and clean energy development.

As Native Nations and Indigenous Peoples living within the occupied territories of the United States, we acknowledge with concern, the refusal of the United States to support negotiating text that would recognize applicable universal human rights instruments and agreements, including the UNDRIP, and further safeguard principles that would ensure their full and effective participation including free, prior and informed consent. We will do everything humanly possible by exercising our sovereign government-to-government relationship with the U.S. to seek justice on this issue.

Our Indian languages are encoded with accumulated ecological knowledge and wisdom that extends back through oral history to the beginning of time. Our ancestors created land and water relationship systems premised upon the understanding that all life forms are relatives—not resources. We understand that we as human beings have a sacred and ceremonial responsibility to care for and maintain, through our original instructions, the health and well-being of all life within our traditional territories and Native Homelands.

We will encourage our leadership and assume our role in supporting a just transition into a green economy, freeing ourselves from dependence on a carbon-based fossil fuel economy. This transition will be based upon development of an indigenous agricultural economy comprised of traditional food systems, sustainable buildings and infrastructure, clean energy and energy efficiency, and natural resource management systems based upon indigenous science and traditional knowledge. We are committed to development of economic systems that enable life-enhancement as a core component. We thus dedicate ourselves to the restoration of true wealth for all Peoples. In keeping with our traditional knowledge, this wealth is based not on monetary riches but rather on healthy relationships, relationships with each other, and relationships with all of the other natural elements and beings of creation.

In order to provide leadership in the development of green economies of life-enhancement, we must end the chronic underfunding of our Native educational institutions and ensure adequate funding sources are maintained. We recognize the important role of our Native K–12 schools and tribal colleges and universities that serve as education and training centers that can influence and nurture a much needed *Indigenuity* towards understanding climate change, nurturing clean renewable energy technologies, seeking solutions and building sustainable communities.

The world needs to understand that the Earth is a living female organism—our Mother and our Grandmother. We are kin. As such, she needs to be loved and protected. We need to give back what we take from her in respectful mutuality. We need to walk gently. These Original Instructions are the natural spiritual laws, which are supreme. Science can urgently work with traditional knowledge keepers to restore the health and well-being of our Mother and Grandmother Earth.

As we conclude this meeting we, the participating spiritual and traditional leaders, members and supporters of our Indigenous Nations, declare our intention to continue to fulfill our sacred responsibilities, to redouble our efforts to enable sus-

tainable life-enhancing economies, to walk gently on our Mother Earth, and to demand that we be a part of the decisionmaking and negotiations that impact our inherent and treaty-defined rights. Achievement of this vision for the future, guided by our traditional knowledge and teachings, will benefit all Peoples on the Earth.
Approved by Acclamation and Individual Sign-ons.

**Intergovernmental Accord between the
Tribal Leaders of the Federally Recognized Indian Tribes in Michigan
and the
Governor of the State of Michigan
to Address the Crucial Issue of Climate Change**

Whereas, the Tribal leaders of the federally recognized Indian Tribes in Michigan and the Governor of the state of Michigan recognize the vital importance of the health and quality of the Great Lakes, inland waters, air, geography, ecosystems, plants, and wildlife to the physical, cultural, and economic welfare and future of all of our citizens;

Whereas, climate change poses a grave and immediate threat to the environment, quality of life, and economy for all of our citizens;

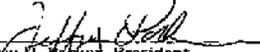
Whereas, each of the Tribes and the state of Michigan are individually exploring ways to significantly reduce greenhouse gas emissions, primarily CO₂, which cause global warming;

Whereas, the Tribal leaders and the Governor understand that climate change is not confined to geographic boundaries and that the prevention and mitigation of significant global warming must include changes in social, economic, and governmental activities;

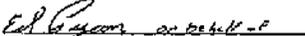
Whereas, combining their expertise and resources will aid the state and tribes to meet their shared commitment to reduce greenhouse gas emissions;

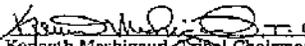
NOW, THEREFORE, the undersigned Tribal Leaders and the Governor affirm their joint commitment to combat global warming through reduction of greenhouse gas emissions and, in furtherance of this goal, agree to designate appropriate representatives of their respective environmental or natural resources programs who shall meet at least twice each year as the Tribal-State Climate Change Forum. The purpose of the Forum is to share information, develop analyses, and propose action plans to address global warming through methods including but not limited to pollution control, alternative clean energy technologies, and conservation. Because effectively addressing global warming is closely linked to the protection of our water resources, the Tribal-State Climate Change Forum may hold its meetings in conjunction with the biannual meetings being held under the Tribal-State water resources accord entered into on May 12, 2004. The Forum shall coordinate its efforts with and review the data and findings of other agencies and work groups in the state working on the problem of global warming.

Entered into this 11th day of June, 2009:

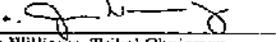

 Jeffrey J. Akaka, President
 Bay Mills Indian Community

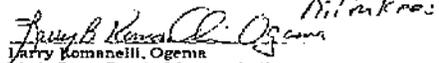

 Derek J. Bailey, Tribal Chairman
 Grand Traverse Band of Ottawa &
 Chippewa Indians

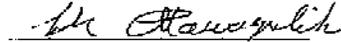

 D. K. Sprague, Tribal Chairman
 Match-E-Be-Nash-She-Wish Band of
 Potawatomi Indians

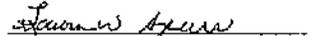

 Kenneth Meshigaud, Tribal Chairman
 Hannahville Indian Community

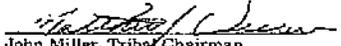
W. Chris Swartz, President
 Keweenaw Bay Indian Community


 Jim Williams, Tribal Chairman
 Lac Vieux Desert Band of Lake
 Superior Chippewa

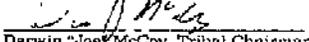

 Larry Komaneill, Ogema
 Little River Band of Ottawa Indians

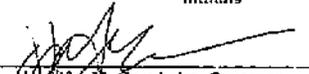

 Frank Eitawageshik, Tribal Chairman
 Little Traverse Bay Bands of Odawa
 Indians


 Laura Spurr, Tribal Chair
 Nottawaseppi Huron Band of
 Potawatomi Indians


 John Miller, Tribal Chairman
 Pokagon Band of Potawatomi Indians


 Fred Cantu, Tribal Chief
 Suginaw Chippewa Indian Tribe


 Darwin "Joe" McCoy, Tribal Chairman
 Sault Ste. Marie Tribe of Chippewa
 Indians


 Jack M. Granholm, Governor
 State of Michigan

The CHAIRMAN. Thank you very much for your statement.
 And now I would like to call on Senator Udall to make the next
 introduction of a panelist.

Senator UDALL. Thank you very much, Chairman Akaka. Let me
 welcome here Duane Yazzie, from the Navajo Nation. Mr. Yazzie
 has served the Navajo Nation at all levels of government, from a
 local chapter level to the Navajo Nation, and I think has a wealth
 of experience, particularly in this area. He has chaired the Navajo
 Nation Human Rights Commission and I think has a lot to say
 about this UN Delegation.

I hope I will be able to be here at the questioning phase, but if
 I am not, I hope that you talk about climate change and the im-
 pacts we are going to see on indigenous people around the world,
 and impacts you will see there at the Navajo Nation.

Welcome. It is good to have you here. Please proceed with your
 testimony.

Thank you, Chairman Akaka.
 The CHAIRMAN. I thank you, Senator Udall.

**STATEMENT OF DUANE H. YAZZIE, CHAIRPERSON, NAVAJO
 NATION HUMAN RIGHTS COMMISSION**

Mr. YAZZIE. [Greeting in native tongue.] Thank you, my good
 leaders.

Senator Udall, I now hold the greater position than all that you
 see on my resume, that of a grandpa and a farmer.

On behalf of the Navajo Nation Human Rights Commission and
 the Navajo Nation, we thank you for the opportunity to speak

about how the United Nations Declaration on the Rights of Indigenous Peoples will improve current U.S. legislation that concerns Native Americans. The Declaration sets the standard to guarantee Native Americans the rights to sacred sites. The Declaration fills the gaps where U.S. domestic policy and law has failed to protect sacred sites.

We Navajos and many other Native peoples consider the Navajo Mountain, Dook'ooosliid, the San Francisco Peaks, located in Arizona, near Flagstaff, as a sacred entity. Since 2004, the Navajo Nation has litigated for the protection of the Peaks pursuant to the American Indian Religious Freedom Act, the National Historic Preservation Act, the National Environmental Policy Act and the Religious Freedom Restoration Act. Although we revere the Peaks as a sacred, single living entity, these Federal acts have failed to protect the Peaks from desecration and economic exploitation.

In 2009, the U.S. Supreme Court denied certiorari to the Ninth Circuit en banc decision upholding the Coconino National Forest Permit authorizing the Arizona Snowbowl Ski Resort to use reclaimed water to produce artificial snow for economic and recreational purposes. On May 24, 2011, the Snowbowl began construction to install a water pipeline for manufacturing artificial snow. The Navajo Nation continues to oppose the Snowbowl efforts, because the use of wastewater poses great concern to us.

The use of wastewater will contaminate the soil and the medicinal vegetation needed to perform ceremonies and prayers. The use of wastewater will prevent a Navajo traditional medicine person from effectively treating his or her patient.

The implementation of the Declaration will hold the U.S. accountable to its responsibility toward Native Americans. The Declaration recognizes Native Americans' possession of distinct rights to sacred sites since time immemorial, whereas the United States recognizes a few rights post-colonization.

The Declaration Articles 11 and 12 acknowledge the indigenous peoples' rights to protect and access past, present and future cultural and Religious sites. Also, the Declaration recognizes the right to practice tradition, custom and ceremonies. The Peaks constitute one of the four main sacred sites to Navajos. Four sacred mountains surround the Navajo Nation, and the cultural integrity rests on the four sacred mountains remaining pure. If one of the mountains is contaminated, it negatively impacts the quality of Navajo life.

Furthermore, the Declaration Article 24 and 25 recognizes the right to traditional medicines and medicinal vegetation, and the right to maintain and strengthen the distinctive spiritual relationship with the land. Navajos gather traditional medicine on the peaks. However, the same vegetation may not exist in the future, due to the contamination.

The Commission and the Navajo Nation advocate for the implementation of the Declaration and have identified three methods in which the U.S. can implement the Declaration. One, ratify the Declaration. Two, integrate the Declaration into existing law and policy. And three, legislatively address Indian law jurisprudence.

Ratifying the Declaration will mandate the U.S. to change its laws and policies toward Native Americans. Integrating the Dec-

laration into existing law will focus substantively on the value of sacred sites, instead of placing an undue burden on procedure. Also, the Declaration will emphasize international policy instead of relying on domestic policy alone.

Legislatively addressing Indian law jurisprudence will repair the disposition of Native American rights to sacred sites. While implementing the Declaration creates a challenge, the United States must balance its own interests with the rights of Native Americans. The United States must respect and abide by international law regarding indigenous human rights, specifically those that address sacred sites.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Yazzie follows:]

PREPARED STATEMENT OF DUANE H. YAZZIE, CHAIRPERSON, NAVAJO NATION HUMAN RIGHTS COMMISSION

On behalf of the Navajo Nation, the Navajo Nation Human Rights Commission¹ ("Commission"), we thank you for the opportunity to present written testimony regarding the oversight hearing on *Setting the Standard: Domestic Policy Implications of the U.N. Declaration on the Rights of Indigenous Peoples as it relates to sacred sites.*²

I. INTRODUCTION

In September 2007, the United Nations General Assembly passed the United Nations Declaration on the Rights of Indigenous Peoples ("Declaration").³ This momentous act complements the 1948 passage of the United Nations Universal Declaration on Human Rights.⁴ The Declaration recognizes the inherent rights of Native Americans prior to colonization and sets the standard to guarantee Native Americans the rights to sacred sites.

The Declaration also fills the gaps where domestic law and policy fail to protect and preserve sacred sites. The Navajo Nation and Navajos consider the San Francisco Peaks ("Peaks") sacred. The desecration of the Peaks violates the human rights of Navajos. Implementation of the Declaration serves to stop the human rights violations that Native Americans continues to endure in the twenty-first (21st) century.

First, this report provides a background of the Declaration, the Peaks and legal efforts undertaken by the Navajo Nation to protect the Peaks. Second, this report discusses the current United States of America ("U.S.") legal framework intended to protect sacred sites and the gaps created by law. Third, this report highlights the importance of the Declaration as it relates to Navajos. Finally, the Commission identified three (3) methods to implement the Declaration within the U.S legal framework.

II. BACKGROUND

A. The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations General Assembly adopted the Declaration on September 13, 2007, by a majority of one hundred and forty-four (144) nations-states in favor, four (4) votes against, and eleven (11) abstentions. Australia, Canada, New Zealand and the U.S. voted against the

¹ See NAVAJO NATION CODE ANN. tit. 2, § 921 (stating that the Commission "is organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation and to interface with the local state and federal governments and with national and international human rights organizations in a accordance with its plan of operation and applicable laws and regulations of the Navajo Nation.").

² The Commission would like to thank Duane H. Yazzie, Chairman; Naomi L. White, Associate Attorney; Rodney L. Tahe, Policy Analyst; and Kathryn Stevenson, Student for their assistance in the preparation of this testimony.

³ United Nations Declaration on the Rights of Indigenous Peoples, UN G.A. Res. 61/295, UN H.R.C., 61st Sess., Annex, Agenda Item 68, UN Doc. A/RES/61/295 (2007) [hereinafter *UNDRIP*].

⁴ Universal Declaration of Human Rights, UN G.A. Res. 217 A (III), U.N. Doc. A/RES/217 (1948).

Declaration. Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine abstained.⁵

In April 2009, one hundred and eighty-two (182) nation-states reached a consensus and “[w]elcome[d] the adoption of the [Declaration] which... positive[ly] impact... the protection of victims and, in this context, urge[d] States to take all necessary measures to implement the rights of indigenous peoples in accordance with international human rights instruments without discrimination”⁶ Since its adoption, Australia, Canada, Columbia, New Zealand, Samoa and the U.S. now endorse or support the Declaration.⁷

In December 2010, President Barack H. Obama issued an *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*⁸ (“Announcement”). The Announcement “express[ed] [the] aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.”⁹ Currently, the Declaration remains a non-legally binding document. The Navajo Nation urges the U.S. to adhere to the international standards and advocates for the Declaration to become binding upon the U.S.

The Declaration provides recognition for rights Native Americans possessed since time immemorial that the U.S. disregards. The U.S. recognizes a few rights post-colonization.¹⁰ For example, the Declaration addresses the right to self-determination, collective and cultural rights, and the right to distinctiveness.¹¹ In addition, the Declaration provides for the rights to education, health and language.¹² The Declaration also emphasizes the rights of Native Americans to maintain and strengthen their own uniqueness, cultures and traditions, and to control the natural resources located on traditional lands.¹³

Since colonization, the U.S. ignored the inherent rights of Native Americans when it did not adhere to treaties, compacts or other agreements.¹⁴ The U.S. also ignored Native Americans human rights when it enacted the policies to terminate Indians,¹⁵ assimilate the people,¹⁶ take

⁵ UN Permanent Forum on Indigenous Peoples, *United Nations Declaration on the Rights of Indigenous Peoples*, available at <http://www.un.org/esa/socdev/unpfi/en/declaration.html> (last visited June 18, 2011) [hereinafter *Signatory Nations*].

⁶ United Nations Office of the High Commissioner for Human Rights, *Outcome Document of the Durban Review Conference*, 24 April 2009, para. 73, available at http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf (last visited June 17, 2011) (emphasis added).

⁷ Signatory Nations, *supra* note 5.

⁸ U.S. Dep’t of State, “*Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples: Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples*,” available at <http://www.state.gov/documents/organization/153223.pdf> (last visited June 16, 2011) [hereinafter *Announcement of U.S. Support*].

⁹ *Id.* at 1.

¹⁰ UNDRIP, *supra* note 2, *passim*.

¹¹ *Id.*

¹² *Id.* at Art. 14, 17.

¹³ *Id.* at *passim*.

¹⁴ *Lonewolf v. Hitchcock*, 187 U.S. 553 (1903).

¹⁵ Indian Removal Act of 1830, 25 U.S.C. 1988 §174; *see also*, H.R. Res. 108, 83rd Cong. (1953) (enacted).

away the land,¹⁷ and asserted unilateral plenary authority without recourse.¹⁸ The U.S. continued to ignore Native American human rights when a federal agency authorized the desecration of a sacred site that will irreparably damage the Navajo Life Ways. The Navajo Nation calls upon the U.S. to disallow further human rights violations.

B. The San Francisco Peaks

Protection of the Peaks greatly concerns Native Americans because Native Americans revere the Peaks as a sacred “single living entity.”¹⁹ Navajos hold the Peaks just as sacred as the Judeo-Christian community holds Mount Sinai²⁰ because the Peaks serve as the foundation to the Navajo Life Way.²¹ Navajos hold a responsibility to remain on and care for the land where the Creator placed us.²² Knowledge of sacred places carries with it the obligation to care for them through the appropriate ceremonies, prayers and songs.²³ Sacred places also offer a place for ceremonies and promote healing for Navajos.²⁴

Navajo ceremonies require regular, sometimes daily, access to sacred places and plants. For example, “Navajo [medicine people] collect materials from the Peaks to form medicine bundles. . . . as a means to connect with the divine.”²⁵ For Navajos, respect for the sacredness of the land requires use and occupancy rights not afforded to Native Americans on public land.²⁶ The essence of the Navajo culture and religion is the relationship between the people and the land, and can only be practiced on the land held sacred for generations.²⁷

C. Litigation to Protect the San Francisco Peaks

*Navajo Nation v. United States Forest Service*²⁸ involved Native American efforts to prevent the Arizona Snowbowl Resort Limited Partnership (“Snowbowl”) from using recycled

¹⁶ An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio, Congress of the Confederation, Doc. No. 32 (1787), commonly known as the Northwest Ordinance of 1787.

¹⁷ General Allotment Act of 1887, 24 Stat. 388, commonly known as the Dawes Act.

¹⁸ See, e.g., *United States v. Kagama*, 118 U.S. 375 (1886); *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831) (holding that “[Indians] are in a state of pupillage. Their relation to the United States resembles that of a ward to a guardian.”).

¹⁹ *Navajo Nation v. U.S. Forest Serv.*, 408 F. Supp. 2d 866, 887 (D. Ariz. 2006).

²⁰ *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058 (9th Cir. 2008), petition for writ filed, WL 355746, U.S. Feb. 6, 2009 (No. 08-846), at 12 [hereinafter *Petition for Writ*].

²¹ Resolution of the Navajo Nation Council, CN-69-02 (11/08/2002) §5(B) (amending Title 1 of the Navajo Nation Code to recognize the Fundamental Laws of the Dine)[hereinafter *Council Resolution*].

²² *Id.* at §5(G).

²³ *Petition for Writ*, *supra* note 16, at 18-19.

²⁴ *Id.*

²⁵ *Petition for Writ*, *supra* note 16, at 5 (citing the Final Environmental Impact Statement by the United States Forest Service).

²⁶ See generally Rebecca Tsosie, *Land, Culture, and Community: Reflections on Native Sovereignty and Property in America*, 34 IND. L. REV. 1291, 1306 (2001); see also Kristen A. Carpenter, *A Property Rights Approach to Sacred Sites Cases: Asserting a Place for Indians as Nonowners*, 52 UCLA L. REV. 1061, 1112-34 (discussing tribal law and custom as a mechanism for recognizing Indian property rights to sacred sites).

²⁷ *Council Resolution*, *supra* note 21, at §5(G).

²⁸ *Navajo Nation*, 408 F. Supp. 2d, at 867.

wastewater to produce artificial snow on the Peaks.²⁹ Snowbowl has a special use permit that allows it to operate a ski area on federal land. The Navajo Nation lost at the Arizona Federal District Court and appealed to the Ninth Circuit Court of Appeals (“Ninth Circuit”).³⁰ A three judge panel of the Ninth Circuit ruled in favor of the Navajo Nation and barred the U.S. Forest Service from allowing the use of recycled wastewater to produce artificial snow.³¹

The U.S. government and Snowbowl then petitioned the Ninth Circuit for Reconsideration. The Navajo Nation reargued the case in front of an eleven judge en banc panel of the Ninth Circuit, which overturned the three judge panel ruling by eight to three (8-3).³² In response to the Ninth Circuit en banc decision, the Navajo Nation petitioned for Writ of Certiorari in the U.S. Supreme Court (“Supreme Court”). On June 8, 2009, the Supreme Court declined certiorari.³³ In effect, the Supreme Court upheld the Ninth Circuit en banc ruling, which authorized the Snowbowl to use recycled wastewater to produce artificial snow.

On May 24, 2011, the Snowbowl began construction to install a water pipeline for producing artificial snow. The Navajo Nation continues to oppose the Snowbowl’s efforts because the use of recycled wastewater will contaminate the soil and medicinal vegetation needed to perform ceremonies and prayers. Moreover, the cultural integrity of the Navajo depends on the Peaks remaining pure. The Navajo Nation maintains the six sacred mountains, including the Peaks, must be “respected, honored, and protected for they are the foundation of the Navajo Nation.”³⁴ Also, the ceremonies and prayers must be “preserved, taught, maintained and performed in their original forms”³⁵ The U.S., through the U.S. Forest Service (“Forest Service”), will permanently disrupt the relationship between Navajos and the sacred site by permitting the Snowbowl to produce artificial snow from recycled wastewater, which contains human waste matter, on the Peaks.³⁶ Therefore, the Navajo Nation’s Life Ways are at risk of permanent damage.

III. GAPS CREATED BY FEDERAL FRAMEWORK

A. American Indian Religious Freedom Act of 1978

The American Indian Religious Freedom Act (“AIRFA”) provides a federal policy to “protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions. . . including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”³⁷ The AIRFA directs federal agencies to consult with native traditional religious leaders

²⁹ *Id.* at 888.

³⁰ *Navajo Nation v. U.S. Forest Serv.*, 479 F.3d 1024, 1025-26 (9th Cir. 2007).

³¹ *Id.* at 1024.

³² *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, *passim* (9th Cir. 2008) (rehearing en banc), *cert. den.*, 174 L.Ed. 2d 270 (2009).

³³ *Navajo Nation v. U.S. Forest Serv.*, *cert. denied*, 129 S. Ct. 2763 (2009).

³⁴ Resolution of the Navajo Nation Council, CN-69-02 (11/08/2002) §5(B) (amending Title 1 of the Navajo Nation Code to recognize the Fundamental Laws of the Dine).

³⁵ *Id.* at §3(1).

³⁶ *Navajo Nation*, 479 F.3d at 1042-43.

³⁷ 42 U.S.C. § 1996 (2011).

to determine what changes need to occur within the federal policy.³⁸ One change made to federal policy was Executive Order 13007, which encouraged agencies to “preserve and protect” Native American religion and practices.³⁹ However, the Executive Order creates no substantive rights or remedies for Native American religious practice.⁴⁰ The Executive Order states that it may not be used to “impair enforceable rights to use Federal land that have been granted to third parties.”⁴¹

Though U.S. Congress (“Congress”) intended the AIRFA to provide protection for sacred sites, the Supreme Court consistently finds against Native Americans efforts to protect and preserve sites located on federal public land.⁴² Also, AIRFA suggests that Native Americans “enjoy protection of sacred sites beyond the Constitution; the reality is that they enjoy less protection and freedom than other American individuals and groups”⁴³ because the statute is void of legal rights enforceable against any person or entity.⁴⁴ In fact, the AIRFA is routinely thought of as having “no teeth.”⁴⁵ The U.S. continues to effect policies that are mainly procedural with no substantive rights.

B. National Environmental Policy Act of 1969

Congress enacted the National Environmental Policy Act (“NEPA”) as part of the policy to protect Native American cultural resources.⁴⁶ The NEPA sets forth procedures for federal agencies to evaluate the effects of “major federal actions” on Native American nations (“Indian nations”).⁴⁷ Major federal actions consist of federal approval, federal permit, or federal funding actions that frequently occur on Native American lands.⁴⁸ One stated purpose of the NEPA preserves “cultural and natural aspects of our national heritage.”⁴⁹ However, the NEPA merely requires a federal agency to take a hard look at the environmental impacts of a proposed action⁵⁰ and develop an Environmental Impact Statement (“EIS”).⁵¹ The NEPA provides no substantive protection for the negative impacts an Indian nation will suffer due to the proposed

³⁸ *Id.*

³⁹ Exec. Order No. 13007, Fed. Reg. 26771 (May 24, 1996).

⁴⁰ Sandra B. Zellmer, *Cultural and Historic Resources, Sacred Sites and Land Management in the West*, Rocky Mountain Law Special Institute, Ch. 3 (2003).

⁴¹ Exec. Order No. 13007, *supra* note 39, at § 4.

⁴² *See Navajo Nation*, 535 F.3d at 1058 (Fletcher, J. dissenting) (stating majority “misunderstands the very nature of religion . . . the religious significance [of the San Francisco Peaks] is of centuries’ duration.”); *Lymg v. Nav. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 477 (Breanan J. Dissenting) (stating majority makes a mockery of Indian religious freedom federal policy.”).

⁴³ Kristen A. Carpenter, *Real Property and Peoplehood*, 27 STAN. ENVTL. L.J. 313, 362 (2008).

⁴⁴ Zellmer, *supra* note 40, at 10, n. 161.

⁴⁵ Rebecca W. Watson, *Managing Cultural Resource Issues on Indian Lands*, Rocky Mountain Mineral Law Foundation (2011). *See also Lymg*, 485 U.S. at 455 (ruling that “nowhere in [AIRFA] is there so much as a hint of any intent to create a cause of action or any judicially enforceable right.”).

⁴⁶ 42 U.S.C. §4321 (1969).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 42 U.S.C. § 4331(b)(4).

⁵⁰ *Id.* § 4332(C).

⁵¹ *Id.*

action. At most the federal agency may involve an Indian nation to participate in the scoping process⁵² or as a cooperating agency⁵³ with regards to preparing the EIS.

Even if an agency finds in its EIS that the site is sacred and home to deities, spirit beings, and that tribal members pray, and have a duty to protect the site the agency nonetheless possesses authority to grant a permit for the proposed action.⁵⁴ Moreover, even if the agency finds that the proposed action will virtually destroy an Indian nation or people's freedom to practice their religious beliefs the proposed action still proceeds.⁵⁵

C. National Historic Preservation Act of 1966

The National Historic Preservation Act ("NHPA")⁵⁶ provides a consultation policy when federal agencies identify historic properties to assess the effects of federal undertakings on the historic properties.⁵⁷ Section 106 process mandates that federal agencies "take into account the effect of the undertaking on any district, *site*, building, structure, or object that is included or eligible for inclusion in the National Register."⁵⁸ However, the NHPA does not provide substantively for the protection of the sacred site either. The NHPA like the NEPA process only provides that agencies consult with tribes through the Section 106 process, which creates confusion and dissatisfaction among the participants.⁵⁹

D. Religious Freedom Restoration Act of 1993

Of the few Congressional efforts to protect Native American sacred sites, the Religious Freedom Restoration Act ("RFRA")⁶⁰ seems to provide the most substantive protection of the sites. The Congress enacted RFRA in response to the Supreme Court's holding that sidestepped the strict scrutiny standard outlined in previous cases.⁶¹ The RFRA's purpose is to "restore the compelling interest test to guarantee its application in all cases where free exercise of religion is substantially burdened."⁶²

The Ninth Circuit en banc decision limited the meaning of substantial burden. The Ninth Circuit acknowledged that the "Indians' religious activities on the Peaks, including the spiritual fulfillment they derive from such religious activities, constitute an 'exercise of religion,'"⁶³ However, the court found no "substantial burden" on religion. The Ninth Circuit reasoned that

⁵² 40 C.F.R. § 1501.6 (2011).

⁵³ *Id.* § 1501.7 (2011); see Watson, *supra* note 45 (discussing the procedures of the NEPA and noting that "there are no specific regulations requiring the agency to seek involvement of tribes.").

⁵⁴ *Navajo Nation*, 479 F.3d at 1042-43 (finding that the use of wastewater to make artificial snow will impact the traditional practices of the Navajo).

⁵⁵ *Lying*, 485 U.S. at 439.

⁵⁶ 16 U.S.C. § 470 (2011).

⁵⁷ *Id.* § 470(w)(7); see Watson, *supra* note 45 (discussing the procedures of NHPA).

⁵⁸ 36 C.F.R. § 800.1 (2011).

⁵⁹ See Watson, *supra* note 45, at ch. 6 (stating "the word 'consultation' is interpreted differently by Indians and non-Indians where the Indians regard the process similar to negotiation and the non-Indians interpret it as contact and discussion of the issues regardless of the outcome.").

⁶⁰ 42 U.S.C. § 2000bb-1 (2011).

⁶¹ *Emp't Div. v. Smith*, 494 U.S. 872 (1990); see *Sherbat v. Vermer*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁶² 42 U.S.C. § 2000bb(b)(1) (2011).

⁶³ *Id.* at n. 12.

“spiritual fulfillment of the Tribes was subjective therefore damaged spiritual feelings, under Supreme Court precedent, government action that diminishes subjective spiritual fulfillment does not ‘substantially burden’ religion.”⁶⁴ The Ninth Circuit found no substantial burden because it limited the substantial burden test only to include if Native Americans (1) were coerced into acting contrary to their religious beliefs by threat of civil or criminal sanction, or (2) if Native Americans were forced to choose between following tenets of their religion and receiving a governmental benefit.⁶⁵

Because RFRA does not specify the substantial burden standard to include Native American quality of life as it relates to the sacred sites, it leaves up to the Supreme Court to decide for the Navajo what is sacred. Although Congress intended to afford Native Americans protection of their sacred sites through RFRA; it failed to protect the Peaks and will likely fail to protect sacred sites in the future. Thus, a gap exists in federal law “leav[ing] no meaningful way for tribes to substantively protect sacred sites that [are] under [the] control of the federal government”⁶⁶ and “[the court] effectively read American Indians out of RFRA.”⁶⁷

IV. GAPS CREATED BY FEDERAL COMMON LAW

Another gap in protection of sacred sites stems from the Supreme Court’s interpretation of the U.S. Constitution (“Constitution”). The Constitution sets forth a guarantee that “Congress shall make no law prohibiting . . . the free exercise of religion.”⁶⁸ The courts employ the compelling interest test to determine whether a violation of the free exercise clause occurred. The compelling interest test includes two steps: (1) whether the beliefs are sincere and whether the government imposes a substantial burden in the free exercise of religion;⁶⁹ and (2) whether a compelling government interest of the least restrictive means outweighs the burden imposed.⁷⁰

However, the Constitutional guarantee became somewhat inapplicable to protecting the free exercise of Native American religion and religious practices because of Supreme Court Indian law jurisprudence. The primary Supreme Court case, which diminished the protection of Native American sacred sites, is *Lyng v. Northwest Indian Cemetery Protective Association*.⁷¹ In *Lyng*, the Supreme Court held that the government did not violate the free exercise of religion without applying the full government compelling interest test.⁷²

Like *Lyng*, the Ninth Circuit en banc in *Navajo Nation* did not analyze whether the government action was compelling and whether it employed the least restrictive means. The Ninth Circuit stated, “the government is not required to prove a compelling interest for its action or that its

⁶⁴ *Id.*

⁶⁵ *Navajo Nation*, 535 F.3d, at 1070.

⁶⁶ Jessica M. Wiles, *Have American Indians Been Written Out of the Religious Freedom Restoration Act?*, 71 MONT. L. REV. 471, 498 (2010).

⁶⁷ *Navajo Nation*, 535 F.3d at 1114.

⁶⁸ U.S. CONST. amend. I.

⁶⁹ See, e.g., *Ashcroft v. ACLU*, 542 U.S. 656, 657 (2004).

⁷⁰ *Id.*

⁷¹ *Lyng*, 485 U.S. at *passim* (involving a proposed construction of a logging road through the sacred high country of three tribes located in the federal lands known as the Six Rivers National Forest where the tribes conducted ceremonial practices for generations).

⁷² *Id.* at

action involves the least restrictive means to achieve its purpose, unless the plaintiff first proves the government action substantially burdens his exercise of religion.⁷³ The Ninth Circuit did not employ the strict scrutiny test mandated by RFRA when it denied the Navajo Nation the fundamental freedom to freely exercise our religion.

Lyng also ignored the collective rights Native American's hold toward sacred sites by ignoring the strict scrutiny test and validating the destruction of Native American sacred area through a land status theory. *Lyng* states, "[w]hatever rights the Indians may have to the use of the area; however, those rights do not divest the Government of its right to use what is, after all, its land."⁷⁴ The *Lyng* court grossly de-valued the relationship between Native Americans and the land.

The Ninth Circuit en banc likened the building project in *Lyng* to the use of recycled wastewater on the Peaks and stated that even though the government action will "virtually destroy the... Indian's ability to practice their religion... we simply cannot uphold the plaintiffs claims of interference with their faith"⁷⁵ and still be in accordance with *Lyng*. Also, the Ninth Circuit also emphasized that the sacred site was located on "government owned" "public" land and that beneficial ownership could become a factor to establishing any rights to sacred sites for the purpose of exercising religion.⁷⁶ Not only did the U.S. courts read Native Americans out of the RFRA, they also wrote Native Americans out of free exercise clause.⁷⁷

The Ninth Circuit only reaffirmed the premise that Native Americans are not protected by the Constitution notwithstanding the desecration of the sacred site compromises the entire Navajo Life Ways. Therefore, the holdings in both *Lyng* and *Navajo Nation* underscore the need for implementation of the Declaration because without recognizable rights to continue the practice of religion, Native American ways of life will be irreparably damaged without a legal remedy.

V. THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES IMPORTANT TO NAVAJO

The Declaration establishes a new standard of recognizing the human rights of Native Americans that the United States should adopt. The Declaration expressly acknowledges Native American individual and collective rights. One purpose of the Declaration serves to

⁷³ *Navajo Nation*, 535 F.3d at 1069.

⁷⁴ *Lyng*, 485 U.S. at 453.

⁷⁵ *Navajo Nation*, 535 F.3d at 1073.

⁷⁶ *Id.* at 1072 (stating "no disrespect for these practices is implied when one notes that such beliefs could easily require *de facto* beneficial ownership of some rather spacious tracts of public property").

⁷⁷ *Lyng*, 485 U.S. at 476 (Brennan, J. dissenting) (stating "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. 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 their entire way of life.") (emphasis added).

protect the culture, religion and sacred sites of Native Americans.⁷⁸ The Declaration contains four (4) articles that address cultural, religious and sacred sites rights.

The Declaration's Articles 11 and 12 proclaims the right to practice, revitalize, maintain and protect their cultures and ceremonies while accessing past, present and further cultural, ceremonial and religious sites.⁷⁹ The Peaks constitute one of six main sacred sites to Navajos. Six sacred mountains surround the Navajo Nation.⁸⁰ The cultural integrity rests on the six sacred mountains remaining pure. If one mountain is contaminated it negatively impacts the quality of Navajo life.

The Declaration's Articles 24 and 25 further recognizes the right to traditional medicines and medicinal plants, and the right to maintain and strengthen the distinctive spiritual relationship with the land.⁸¹ Navajos gather traditional medicine on the Peaks; however, the same traditional medicines and medicinal plants may not exist in the future due to the contamination.⁸² Additionally, according to a traditional medicine man the following ceremony represents a spiritual relationship to the Peaks that will be permanently damaged:

The four sacred mountains represent the main beams or pillars of the Diné hogan structure. The songs and prayers in the Blessing Way ceremony are systematically arranged and recited in a clockwise fashion according to the four and six sacred mountains.

The four sacred mountains are contained in the medicine bundle considered as a sacred holding. They are individually tied and secured according to the formation and order of the four sacred mountains. The west bundle is associated with the Peaks, which represents the Life Way of the Diné people. The songs and prayers give strength and stability to one's thinking, planning, and living.⁸³

⁷⁸ See generally the Declaration's preamble (recognizing that respect for indigenous knowledge, cultures, and traditional practices contributes to sustainable and equitable development and proper management of the environment).

⁷⁹ UNDRIP, *supra* note 2, art. 11.1 ("Indigenous peoples have the right to practice 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, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.")

⁸⁰ Navajo Nation Council Resolution CN-69-02 (11/08/2002) (stating that Navajo (Diné) Natural Law recognizes the six sacred mountains of the Navajo Nation: Mount Blanca near Alamosa, Colorado; Mount Taylor near Grants, New Mexico; the San Francisco Peaks near Flagstaff, Arizona; Mount Hesperus near Durango, Colorado; and Huerfano Mesa and Gobernador Knob, both near Bloomfield, New Mexico).

⁸¹ UNDRIP, *supra* note 2, art. 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."); *Id.* art. 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.")

⁸² *Petition for Writ*, *supra* note 16, at 8 (recognizing in the USFS Final Environmental Impact Statement that snowmaking and the expansion of facilities, especially the use of reclaimed water, would contaminate the natural resources needed to perform the required ceremonies that have been, and continue to be, the basis for the cultural identity for many of the tribes).

⁸³ Interview by Leonard Gorman with Anthony Lee, President, Diné Hatahtii Ass'n, in St. Michaels, Ariz. (June 20, 2011).

Furthermore, the Navajo Natural Law states and teaches that all life, including Mother Earth, is sacred and recognizes the obligation Navajos have “to respect, preserve and protect” all that was provided by the Holy People.⁸⁴ Furthermore, Navajo Natural Law expresses that the rights and freedoms of the people to use the sacred elements of life, the land and sacred sites must be used with the proper protocol of respect and offering, and that such practices must be protected and preserved since it serves as the foundation of religious ceremonies and the Navajo Life Ways.⁸⁵ Finally, the Navajo Natural Law states, “it is the duty and responsibility of the [Navajo people] to protect and preserve the beauty of the natural world for future generations.”⁸⁶

The Navajo Nation calls upon the U.S. to end the discriminatory and unjust law and policy that continues to be applied to Native Americans. Although, the U.S. Announcement demonstrated some concurrence with the Declaration, human rights violations continue to occur.

VI. RECOMMENDATIONS TO FILL THE GAPS

For the Declaration’s articles to impact Native Americans, it necessarily requires the U.S. to evaluate and change the law and policy towards Native Americans. Implementation of the Declaration will help the U.S. clarify its position regarding the human rights of Native Americans and promote uniformity in the law and policy. The Commission identified three (3) methods in which the U.S. can implement the Declaration:

- A. Endorse and Ratify the Declaration, or
- B. Integrate the Declaration into Existing Law and Policy, or
- C. Legislatively address Indian Law Jurisprudence.

Regardless of which method the U.S. chooses, the Navajo Nation urges that the human rights of Navajos be recognized and protected.

A. Endorse and Ratify the Declaration

The U.S. must fully endorse the Declaration by acting on the Announcement of Support. Although the Navajo Nation urged the U.S. to endorse the Declaration without conditions, the U.S. only issued an Announcement of *Support* for the Declaration within the restrictive context of federal law and policy.⁸⁷ The U.S. Announcement states:

The United States supports the Declaration, which – while not legally binding or a statement of current international law – has both moral and political force... [I]t expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.⁸⁸

⁸⁴ Council Resolution, *supra* note 21, at §5(A).

⁸⁵ *Id.* at §5(B).

⁸⁶ *Id.* at §5(G).

⁸⁷ Announcement of U.S. Support, *supra* note 8 (emphasis added).

⁸⁸ *Id.*

Once the Declaration becomes binding, little prevents utilization of the Declaration in matters involving Native Americans where domestic law does not protect the cultural and religious rights. For example, the Supreme Court already abides by international standards as “evolving standards of decency that mark the progress of a maturing society . . . [and] has treated the laws and practices of other nations and international agreements as relevant.”⁸⁹ The Declaration will ensure fair decisions where U.S. interests do not automatically outweigh the human rights of Native Americans.

B. Integrate the Declaration into Federal Law and Policy

i. Federal Law

In the U.S., Native Americans have no First Amendment rights when it comes to government land use. The federal government holds a significant amount of land that various tribes across the country consider sacred. Since there was no recourse under the U.S. Constitution, this litigation relied, *inter alia*, on an application of the Religious Freedom Restoration Act. Congress intended to protect the collective right of Native Americans through RFRA. However, the *Navejo Nation* and *Lyng* courts based the decisions on individual rights not collective rights contrary to Congressional intent. The Ninth Circuit’s limited interpretation of substantial burden does not protect the collective rights of Native Americans. Federal courts interpret substantial burden in various ways but the Ninth Circuit provides the most restrictive interpretation of substantial burden.

For example, the Third Circuit provides that a substantial burden exists when “a follower is forced to choose between following the precepts of religion and forfeiting benefits otherwise generally available [or] abandoning the precepts of his religion, or the government put substantial pressure on an adherent to substantially modify his behavior and violate his beliefs.”⁹⁰

Like the Ninth Circuit, the Fourth Circuit and District of Columbia Circuit interpret substantial burden to exist only in limited circumstances when one is “compelled to engage in conduct proscribed by their religious beliefs or forced to abstain from religious mandates”⁹¹ or where a regulation “forces [practitioners] to engage in conduct forbidden or refrain from conduct required.”⁹²

The Fifth Circuit concluded that a substantial burden is created when “[the governmental activity] truly pressures the adherent to significantly modify his religious behavior and significantly violate[s] his religious beliefs . . . [but not when] it merely prevents the adherent from either enjoying some benefit that is not otherwise generally available or . . . is not otherwise allowed.”⁹³

⁸⁹ *Graham v. Florida*, 130 S. Ct. 2011, 2020 (2010).

⁹⁰ *Washington v. Klem*, 497 F.3d 272, 280 n. 7 (3d Cir. 2007).

⁹¹ *Goodall v. Stafford Cnty. Sch. Bd.*, 60 F.3d 168, 172 (4th Cir. 1995), *cert. denied*, 516 U.S. 1046 (1996).

⁹² *Henderson v. Kennedy*, 253 F.3d 12, 16 (D.C. Cir. 2001), *cert. denied*, 535 U.S. 986 (2002).

⁹³ *Adkins v. Kasper*, 393 F.3d 559, 568 (5th Cir. 2004), *cert. denied*, 545 U.S. 1104 (2005).

The Seventh Circuit provides that a substantial burden is one "that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable."⁹⁴

The Eighth Circuit and Tenth Circuit share the same test which requires that "significantly inhibit[s] or constrain[s] religious conduct, meaningfully curtail[s] or den[ies] a [person's] reasonable opportunities to engage in fundamental activities of [one's] religion."⁹⁵

Consistently, the Supreme Court denied certiorari to determine a single interpretation of the substantial burden tests in the federal courts. Under any of the tests, it appears that using recycled wastewater that contains human waste would substantially burden Native American religion(s) because the cultural integrity and religious conduct depend on the Peaks remaining pure.

Therefore, the Navajo Nation recommends that Congress amend the RFRA to clarify the substantial burden test to include express protection of Native Americans sacred sites like the Peaks.

ii. Federal Policy

Another mechanism the U.S. can employ is an Executive Order mandating the Declaration's articles be read as an overarching policy to protect the human rights of Native Americans in the U.S. Also, the Executive Order should recognize enforceable rights whereby Indian nations should have judiciable remedies domestically and internationally. Moreover, the Executive Order should expressly acknowledge that international treaties, covenants, agreements, and law afford Native Americans the right to use traditional property. Furthermore, that Executive Order should explicitly state that Native Americans possess the right to use sacred sites located off reservation in federal public land. Currently, no such policy exists.

Therefore, the Navajo Nation recommends that President Barack H. Obama issue an Executive Order regarding the human rights of Native Americans.

C. Legislatively Address Indian Law Jurisprudence

In response to the Supreme Court decisions that divested Native Americans of rights Congress acted to provide remedies.⁹⁶ For example, as a response to *Lyng*, Congress passed the California Wilderness Act which preserved much of the national forest from logging or further related development.⁹⁷ Also, Congress withdrew allocated funding for the proposed logging

⁹⁴ *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003), *cert denied*, 541 U.S. 1096 (2004).

⁹⁵ See *Christians v. Crystal Evangelical Free Church*, 521 U.S. 1114 (1997); *Weir v. Nix*, 114 F.3d 817,820 (8th Cir. 1997); *In Re Young*, 82 F.3d 1407, 1418 (8th Cir. 1996); *Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir. 1995), *cert denied*, 515 U.S. 1166 (1995).

⁹⁶ See Ruth Stoner Muzzlin, *Seeing the Free Exercise Forest for the Trees: NEPA, RFRA, and Navajo Nation*, 16 HASTINGS W.-N.W. J. ENVTL. L. & POL'Y 277, 292 (2010) (discussing RFRA as explicitly approving the compelling interest test and AIRFA legalizing the religious use of Peyote in the Native American Church).

⁹⁷ California Wilderness Act of 1984, Pub. L. No. 98-425, 98 Stat. 1619.

road to be constructed on the sacred high country.⁹⁸ However, the Congressional remedy does little to avoid *Lyng*'s progeny in the federal circuit courts currently and in the future.

The *Lyng* analysis still plagues Native Americans because the Supreme Court has not found *Lyng* unconstitutional. Likewise, the Supreme Court consistently finds against Native American rights based on the premise that rights rest upon possession of land title and the power to exclude⁹⁹ notwithstanding Native Americans property rights have already been recognized as an international human right.¹⁰⁰ Also, title is not dispositive to Native American rights to sacred sites and traditionally used lands, "the mere fact that the land is not held in Native title does not mean that the people do not hold these obligations, nor . . . that they no longer maintain the rights to these lands."¹⁰¹ Native Americans hold a responsibility to the land in perpetuity regardless of title because the cultural integrity of the people is inextricably tied to the site. It is significant that the federal government took title to a large amount of ancestral and sacred land in part, in exchange for a promise to act as a guardian and to fulfill a trust responsibility to the tribes. In practice, this trust responsibility as it should be applied to protect sacred sites has had essentially no application.

Moreover, Congress has not recognized that Native American's hold an interest in sacred sites regardless of whether the sacred sites are located on public lands. Congress possesses the authority to recognize that Native Americans hold legally enforceable rights to sacred sites on public lands.

Therefore, the Navajo Nation recommends that Congress enact legislation providing for Native American rights to sacred sites on federal lands.

VII. CONCLUSION

The Commission and Navajo Nation urge the U.S. to fully endorse the Declaration without conditions, and recognize that Mother Earth has grown weary of the unrelenting abuse inflicted upon her either by desecration, mining, or contamination. The Navajo people are gravely concerned with the health of Mother Earth and the Declaration provides a means of protection of the land and the sacred sites that rest upon it. According to Navajo teaching, the increasing incidences of natural disasters and climate change are no coincidence. The Navajo people and other indigenous nations have something to say and offer when the U.S. undertakes the task of implementation of the Declaration. We ask to be at the table, so we can help heal some of the hurt and give hope for the future.

One indigenous nation already acted to heal Mother Earth by using the Declaration as a framework to reform federal Indian law and policy. On December 20, 2010, the Pueblo of Jemez and the Santa Fe National Forest entered into a historic agreement that gives the

⁹⁸ 26 U.S.C. §460bbb (2011).

⁹⁹ See generally *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Hagen v. Utah*, 510 U.S. 399 (1994); *Montana v. United States*, 450 U.S. 544 (1981); *Oliphant v. Suquamish Indian Tribe*, 435 U.S.191 (1978); *Johnson v. McIntosh*, 21 U.S. 543 (1823).

¹⁰⁰ See generally JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 105 (1996).

¹⁰¹ Rebecca Tsosie, *supra* note 27, at 1306.

indigenous nation “decision-making powers over its aboriginal lands and provides a model implementation of the indigenous human rights document.”¹⁰² Now, the U.S. as a whole must act to abide by the Declaration’s provisions.

While the Navajo Nation recognizes that implementing the Declaration creates a challenge, the U.S. need not continue to tell Native Americans what is sacred or important to us. The U.S. must consider the human rights of Native American and balance them with its own interest. The balancing must not discriminate against Native Americans nor perpetuate injustice. The U.S. must respect and abide by the international law regarding Native Americans human rights, specifically those that address sacred sites.

¹⁰² *Jemez Pueblo, Santa Fe National Forest Sign Historic Pact*, INDIAN COUNTRY TODAY, (Jan. 7, 2011), available at <http://ict-dev-9c700c08hc.nronfelientarea.com/ict-archives/jemez-pueblo-santa-fe-national-forest-sign-historic-pact/> (last visited June 21, 2011).

The CHAIRMAN. Thank you very much, Mr. Yazzie.
And now we will receive the statement of Melanie Knight, Secretary of State from Oklahoma.

**STATEMENT OF MELANIE KNIGHT, SECRETARY OF STATE,
CHEROKEE NATION**

Ms. KNIGHT. Thank you, Mr. Chairman, Senator Udall. Thank you both for convening this hearing and giving the Cherokee Nation the opportunity to present testimony regarding the effects of the UN Declaration on the Rights of Indigenous Peoples.

I am Melanie Knight, Secretary of State for the Cherokee Nation. I am here to testify on behalf of over 300,000 citizens of the Cherokee Nation.

The Cherokee Nation applauds President Obama’s recent decision to endorse the Declaration. However, it is important to remember that actions, rather than words, are what will heal the centuries of the Government’s failed Indian policies. A central theme of the UN Declaration is the right of indigenous peoples to make the decisions that will shape our cultures, traditions, governments and future generations.

The domestic policy of the United States should support the ability of tribal nations to make the decisions that are best suited for our own specific needs. The history of the Cherokee Nation indicates that tribal governments, when allowed to freely govern, are better suited to meet the needs of our citizens than the bureaucracy of Federal agencies. I ask that this Committee support the President’s endorsement of the UN Declaration, and ensure that the human rights of indigenous peoples living in the United States are respected, protected and fulfilled.

I would like to offer the Committee some positive examples of the Cherokee Nation exercising its rights of self-determination. Self-reliance and economic development is imperative to our development. As prescribed in Article 21 of the Declaration, indigenous peoples have the right to the improvement of their economic and social conditions. We ask that the Federal Government uphold this provision by continuing to sustain policy that is conducive to economic self-reliance of tribes.

Cherokee Nation has created an economy through diversified businesses and those include safety and security, hospitality, IT, manufacturing and aerospace. The policies that allow business to flourish in Indian Country must be protected and advanced by the Federal Government.

The Nation uses revenue earned from our businesses to supplement Federal Government funding for Cherokee programs and services. During the last decade, more than 5,000 jobs have been created. This allows our citizens to stay in Cherokee communities instead of seeking employment outside the Cherokee Nation, thereby solidifying community ties and creating economic self-reliance for our citizens.

The revitalization of culture and language is the primary purpose of several articles of the Declaration, most prominent being in Article 13. The Cherokee Nation invests considerable resources and effort into the revitalization of our history, language and culture. We ask this Committee to ensure and protect our rights through facilitating the inclusion of Native language, history and culture throughout all programs and activities that affect Indian Country. For instance, policy changes are required to enable both public and private schools to further language preservation efforts.

An example of how language preservation can flourish is seen in our language immersion school in Oklahoma. Students learn math, science and writing and other core subjects, much like their counterparts in public schools. But the language of instruction is done entirely in the Cherokee language.

Because the immersion school is currently limited to one school, access to resources is needed to allow language preservation efforts in the public school system for the more than 20,000 Cherokee citizen students who don't attend our one school.

The health of our people continues to be a priority for the Cherokee Nation. The Declaration, as described in Article 24, supports self-determination in providing the resources and support to create positive change in the care of our citizens by stating, "Indigenous peoples have the right to maintain our health practices and access to all social and health services." We ask the Committee to support our efforts to increase the quality of health care for our people by removing barriers to access to care and increasing health care appropriations to support the wellness of our citizens.

Currently, we have a network of eight outpatient clinics and a hospital that provides Native people with primary and specialty medical and dental services, as well as other public health programs. We need to remove bureaucratic policy barriers that inhibit our ability to truly self-govern and efficiently provide health care for our citizens.

In conclusion, on behalf of the Cherokee Nation, I respectfully request that all levels of government become informed of the obligations in the Declaration and continue taking steps toward ensuring human rights. We do think the global community will look to the United States to model the way we work to improve the quality of life for Native people here. I have seen first-hand what Cherokees can do when we are free to determine our own destiny. We must continue to work together to improve and advance self-determina-

tion in Indian Country, so that we can build stronger nations for future generations.

Thank you.

[The prepared statement of Ms. Knight follows:]

PREPARED STATEMENT OF MELANIE KNIGHT, SECRETARY OF STATE, CHEROKEE NATION

Introduction and History: Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for convening this hearing and giving the Cherokee Nation the opportunity to present testimony regarding the effects of the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* domestic implications as an international policy. I am Melanie Knight, Cherokee Nation Secretary of State, and I am testifying on behalf of one of the largest tribal nations in the United States and more than 300,000 Cherokee citizens.

On September 13, 2007, the United States was one of four member countries of the United Nations to vote against adoption of the *United Nations Declaration on the Rights of Indigenous Peoples (Declaration)*. The Cherokee Nation applauds President Obama's recent decision to endorse the *Declaration*. However, it is important to remember that actions, not words, are what will heal the centuries of wounds inflicted on Native Americans through the government's failed policies. I am here today to share a few thoughts on how the federal government can formulate policies and support Tribal programs and initiatives that ensure the actions of the United States reflect the standards set forth in the United Nation's *Declaration*.

The Cherokee Nation is an Indigenous nation that exercises a government-to-government relationship with the United States based on a system of treaties, legislative acts, and executive orders dating back to the 1700's. The history of this relationship has been severely marred by numerous actions of the federal government that have undermined or blatantly disregarded the human rights of the Cherokee people. To examine a brief chronology of these events, one will observe repetitions of coerced agreements, ill-conceived policies, and procedures that have been implemented unilaterally and drastically altered the course of Cherokee history.

In 1835, a small, dissident group, of unauthorized Cherokee tribal members signed the Treaty of New Echota, which exchanged the Southeastern homeland of the Cherokee Nation for land in Indian Territory, which would later make up the State of Oklahoma. Congress ratified the treaty over the protests of the vast majority of the Cherokee people and the legitimate government of the Cherokee Nation. Subsequently, the Cherokee Nation was forcibly removed from its homeland in the southeastern United States. By the time of complete removal to Indian Territory, over 4,000 men, women, and children died on what is now known as the Trail of Tears.

In 1887, the United States Congress passed the General Allotment Act, also known as the Dawes Act. Indian lands and territories, including areas promised to the Cherokee Nation in prior treaties, were allotted to individual Indians while remaining land, called surplus land, was sold to non-Indians. The effect of this policy was near-destruction of the Cherokee Nation, loss of over 99% of Cherokee land, and a long period in which Cherokee citizens were relegated to second-class status.

Fortunately, in 1971, a period of revitalization for the Cherokee Nation government began. The United States once again recognized the authority of the Cherokee people to choose their own Principal Chief. Since 1971, a resurgence of culturally-relevant governance, economic entities and education programs, like language revitalization, have emerged from Cherokee citizens in northeastern Oklahoma. The Nation strives to maintain our distinct cultural identity and autonomous government as we recognize that the principles of self-determination and self-governance have enabled us to prevail over the destructive policies of the past as well as the current federal policies that still fall short of respecting the inherent human rights of Indigenous peoples.

A central theme of the UN *Declaration* is the right of Indigenous Peoples to make the decisions that will shape their cultures, traditions, governments, and future generations. The domestic policy of the United States should support the ability of Tribal Nations to make the decisions that are best suited for their own unique needs. The history of the Cherokee Nation indicates that tribal governments, when allowed to freely govern, are better suited to meet the needs of their citizens than the bureaucracy of federal agencies. As is evident in the rest of my testimony, the Cherokee Nation flourishes when the federal government honors its duties and obligations. The treaties and agreements already ratified by the United States are further clarified by the *Declaration*. I ask that this Committee wholeheartedly supports the President's endorsement of the UN *Declaration* to ensure that the human rights of America's indigenous peoples are respected, protected and fulfilled. I would like to offer the committee some positive examples of the Cherokee Nation's exercising its human rights of self-determination.

Self-Reliance and Economic Improvement: As prescribed in *Article 21* of the *UNDRIP*, "Indigenous peoples have the right...to the improvement of their economic and social conditions." We ask that the federal government uphold this provision and create and sustain policy and an environment that is conducive to the economic self-reliance of tribes across the United States. Cherokee Nation has created entities, like Cherokee Nation Businesses, that have helped protect our autonomy and self-determination and these businesses and supporting programs must also be protected by the federal government.

Cherokee Nation Businesses (CNB): CNB is the company that develops and manages the Cherokee Nation's diverse business portfolio, including many small businesses. These companies generate revenue for the Cherokee Nation and form beneficial partnerships with local communities while developing long-term strategies for workforce and economic development. The Cherokee Nation uses revenue earned from these business activities to supplement federal government funding for many Cherokee programs and services. For example, we operate the largest tribal health system in the United States, including a hospital, eight outpatient medical facilities with medical, dental and vision care, as well as multiple other health-care programs.

It is extremely important to note that not only do these profits fund programs and services, but they are also used to capitalize additional businesses, many of which are §(a) certified or pending certification. These businesses create new employment opportunities in often economic-distressed communities and allow Cherokee entrepreneurs to run businesses, which in turn, makes a significant impact within the Cherokee Nation's 14-county jurisdiction. Therefore, we also ask the Committee to ensure that §(a) programs continue unencumbered and free from any new regulations while the current reforms are allowed to alleviate past problems with the program.

Because of CNB's successes during the last decade, more than 5,000 jobs have been created in rural northeastern Oklahoma. These jobs have had a positive economic impact on the communities where they operate, which historically receive little to no economic development aid from outside sources. Job creation has not only increased economic revenue for the rural towns, but it has allowed citizens to stay in their communities instead of seeking employment elsewhere, thereby solidifying community ties and creating economic improvement and self reliance.

Revitalization of Culture and Language: The primary purpose of several articles of the *Declaration*, most prominent being *Article 13*, is the revitalization of Indigenous culture. Presently, the Cherokee Nation has invested numerous resources and much effort into the "Right to revitalize, use, develop and transmit to future generations [our] history, language" and our cultural traditions and we ask this Committee ensure and protect our rights and the programs, like our Immersion and Sequoyah School System, which accomplish this revival.

Cherokee Language Immersion School: As affirmed by *Article 14* of the Declaration, the Cherokee Nation is very proud of our Language Immersion School. The Immersion School currently serves 100 students annually and expects to increase enrollment in the coming years. The program immerses students from kindergarten through fifth grade in the Cherokee language for an entire school day. The school will also add another grade each subsequent school year to accommodate matriculation. Children learn math, science, writing and other core subjects, much like their school age counterparts in public schools, but the language of instruction is Cherokee. All teachers are fluent in Cherokee and are certified by the State of Oklahoma. By age 4, children are able to read in Cherokee and by kindergarten they begin to address Oklahoma State Priority Academic Student Skills (PASS) standards in Cherokee.

A highlight of the education system is the relationship with Apple in which Cherokee Nation has worked closely to develop Cherokee language software for Mac operating systems, iPhone, iPod, and iPad. A person can download the Cherokee language application and syllabary on iTunes and in the Application Store simply by searching "Cherokee language". Furthermore, students work on Mac laptops; the Macintosh operating system has supported Cherokee language since 2003 and features a keypad overlay with Cherokee's 85 characters. One notable use of the technology is that it has enabled our students to chat online in Cherokee with students from the Eastern Band of Cherokee's immersion program.

The School serves as a national model for teaching native languages and has been featured among the nation's most promising practices for native language preservation. Immersion students consistently perform at a higher level than their mono-lingual counterparts on state standardized tests. The success of the Cherokee Language Immersion School has inspired several other tribal education departments to create similar programs across the country. Additionally, educators have modified the Cherokee model to teach native languages to adult students.

Because the Immersion School is tribally funded and is, therefore, limited to a small number of students, additional funding is needed to enable Cherokee Nation to engage in meaningful preservation efforts in public schools. The Committee should recognize the barriers Indian nations face in implementing language programs in state school systems and the overwhelming need to provide assistance to any tribal nation working to preserve native language through public school instruction. This one area (in support of *Article 14*) could begin to correct some of the damage done to the native languages and cultures as a result of past federal policies of forced assimilation. (See also *Article 8*)

Sequoyah Schools: Sequoyah Schools is a former BIA boarding school, which was turned over to the Nation in 1985. Today the Campus covers over 90 acres and houses more than 400 students in grades 7-12 representing 42 Tribes. The majority of students are Cherokee tribal citizens. The School is regionally and state accredited and has consistently met Adequate Yearly Progress (AYP). Sequoyah Schools

receives funding from Bureau of Indian Education grants and the Cherokee Nation motor vehicle tag funds.

Sequoyah Schools was not performing well when the Nation took over its management in 1985. Today, it is the school of choice for college-bound students. Last year graduating students received \$3.5 million in scholarships and therefore, admission to Sequoyah Schools is highly competitive. The School offers Advanced Placement classes, concurrent enrollment in local colleges and universities, technology-focused classes like robotics, fine arts and performing arts classes.

In addition, Sequoyah Schools' success has been driven by local tribally-led initiatives to identify problems and is committed to use tribal resources to solve them. Sequoyah Schools developed a long-range facility plan addressing infrastructure issues, including the need for new dormitory space and library renovations. Cherokee Nation's ultimate goal is to create an academic environment at Sequoyah Schools that mirrors other college preparatory schools in the country. Sequoyah Schools is in the process of developing advanced curriculum and data software to track student's academic performance and achievement. With better data, the Nation hopes to improve academic and extracurricular programming to better serve and support students.

Cherokee Language in the Public Schools: The Nation and local public school superintendents are also working together to establish Cherokee language instruction in the schools. The Northeastern State University degree in Cherokee Language Education and the Cherokee certification test are important steps in this process. Oklahoma requires students to complete two years of coursework in a foreign language, and since Cherokee is considered a world language, it is now being taught to youth in Oklahoma schools.

Protection of Health Practices: As described in *Article 24*, "Indigenous peoples have the right to traditional medicines and to maintain [our] health practices...and right to access, without any discrimination, to all social and health services." We ask the Committee to uphold our sovereign right to protect our peoples from illness and maladies and provide healthcare services to our Tribal Citizens.

Cherokee Nation Health Services: Presently, the Nation operates a sophisticated network of eight rural outpatient health centers that provide Indians with primary medical care, dental service, optometry, radiology, mammography, behavioral health promotion and disease prevention and a public health nursing program. In addition to these services, the Cherokee Nation also operates WW Hastings Indian Hospital in Tahlequah, Oklahoma. Hastings is a 60-bed facility offering outpatient and ancillary services with over 300,000 outpatient visits each year and more than 335,000 prescriptions filled annually. We also have inpatient and outpatient programs for management of specialty care throughout our 14-county jurisdiction, therefore adequate support for the fulfillment of *Article 24* and cooperation between tribal nations and federal agencies is crucial to ensure the well being of our people and other indigenous peoples across the country.

CONCLUSION: As Secretary of State and on behalf of the Cherokee Nation, I respectfully request that the United States respects, protects and fulfills the provisions of the *UN Declaration on the Rights of Indigenous Peoples*. It is essential that all levels of government are informed of the human rights obligations of the federal government as a means of ensuring that the human rights of Indigenous peoples are upheld and respected.

Cherokee Nation wants to give our Tribal citizens and surrounding communities the ability to accomplish the goal of building "Jobs, Community, and Language." We want to work with all entities that play a role in bettering the future of our Tribe. Ultimately, the Nation wants its citizens and government to be versed in the skills and technology of today and rooted in the language and traditional life ways of the Cherokee culture. Federal support of the *Declaration* ensures that we may continue to enhance our services, self-

reliance and cohesive tribal development in the region. It is crucial that this body maintains its fiduciary relationship and upholds the promise of President Obama to protect government-to-government relations as prescribed in his full endorsement of the *UN Declaration* and its Articles that furthers the rights of Indigenous peoples.

Once again, the Cherokee Nation thanks the Chairman, Vice Chairman and the Members of the Committee for their time and should you have any additional questions, please contact our Cherokee Nation Washington Office at (202) 393-7007.

The CHAIRMAN. Thank you very much for your statement.
President Fawn Sharp, how can the United States enhance trade relations and conduct commerce by Indian nations?

Ms. SHARP. I believe that if the United States looks to Article 21, Article 36 and Article 37 and allows and embraces the notion that Indian tribes can enter into trade and commerce outside of the United States with other countries throughout the world, that would be a significant step. The Quinault Nation looked at carbon sequestration a number of years ago. We had an opinion that even though the United States was not a signatory to the Kyoto Protocol, we could enter into a trade agreement with nations outside of the United States.

At that time, carbon was being traded on the domestic market at about \$5 a metric ton. The international market was \$25 a metric ton. So we believed that with our own resources at home, if we had the opportunity to trade freely, within the United States and outside of the U.S. economy in this new and emerging marketplace, that seeks to reduce the carbon footprint throughout the world, it would be a huge, huge step for Indian Country.

The CHAIRMAN. I asked you two parts, one of course was how can the United States enhance trade relations. Is it working fine at this point in time?

Ms. SHARP. No, it is not. It is not working at this point in time. We do have a number of barriers. Take for example our timber industry. The U.S., through ESA laws, has significant burdens placed on our timber industry. Because our timber industry relies on the stumpage values back to the tribe, the ability of not only our tribal businesses but individual Indian-owned business to enter into the forestry and trade business, when there are heightened restrictions on the marbled murrelet and spotted owl within our territories, but they don't exist outside of Quinault in adjacent lands, we have found that those species are now taking refuge on our lands, to our detriment.

So the consequence is we are burdening, we are taking the burden for all those other companies to do as they choose. So it is not working, and we think that if you look to those provisions of the Declaration that I mentioned, as well as some domestic laws like the ESA and the unfair and discriminatory burdens it places on us, there is a lot of room for improvement.

The CHAIRMAN. Thank you very much for your responses.

Mr. Ettawageshik, in your testimony you state that the current Federal recognition process does not meet the principles set forth in the Declaration. How might the Federal recognition process be improved to meet those principles?

Mr. ETTAWAGESHIK. Thanks for the question. As I think of this, I think about this process. As you know, I am the Co-Chair of the Federal Acknowledgment Task Force for the National Congress of American Indians. I have been working on these issues for quite a long time. There have been, I myself was the former chairman of a tribe that went through the process and ended up with legislative, with being recognized through legislative efforts as opposed to the administrative process.

I have been on both side of this as a leader. I have seen a lot of other people that have done this. I know that the biggest problem that we have seems to be that the process assumes at the beginning that we are not a sovereign nation, and that the process seems to be one that will, one of granting sovereignty, which I don't

believe you can do. It needs to be one where you are looking at the kinds of questions and the things that the tribes are required to meet, a sovereign entity would be doing those things. Yet the United States has not been acknowledging that sovereignty.

So therefore, it inhibits the practice of the jurisdiction over the peoples that are involved within the tribal citizenry.

The other problem that we have is that since the process has been, to just look at it from the outside and take a look at it, right now this process is one that, it seems to be a process whose job it is to deny. And if somebody makes it through, it is just by luck or by just all the cards just fall together just the right way. Pardon the pun on that one.

What happens is, it is sort of a miracle that anybody makes it. And then as soon as somebody does, it is like the system changes and adjusts and says, oops, we made a mistake, somebody got through, now we have to tighten it up a little more. So they keep changing the line. It is like somebody drawing a line in the sand and saying, cross that line. Oops, well, you did that one, now cross this line. This is what the people who are in this process believe.

So what we look at through the Declaration is the Declaration talks about the inherent rights of the indigenous peoples and the expectation that they will be treated fairly. When you are in a process where an entire generation, sometimes two generations of elders die at the tribe while their petition for recognition is pending, that is not fair.

So what has to happen is a more timely process needs to be done. It needs to be reviewed. And frankly, I think that we have now a very good tool to use, the provisions of the Declaration, to be analyzed in the process in light of many of these provisions. I can't cite the specific sections, but as I have read the Declaration and been involved in it over the years, there are many different places in there that intersect the recognition process.

So I would say that this now gives us a tool for that review of the process in a way that we haven't done before. I think we do need to accomplish that.

The CHAIRMAN. Thank you for your response.

Mr. Yazzie, do you have specific recommendations on how Federal laws can be amended or improved to better comport with the ideals expressed in the Declaration, particularly, for instance, around protecting the practices around spirituality, religion and traditional healing, this area? Do you have specific recommendations to improve the Federal law on this?

Mr. YAZZIE. Thank you, Mr. Chairman, I have only one recommendation, which is to have the Federal Government hear what it is that we say. Oftentimes, too many times throughout our relationship, the Federal Government has decided that it knows best what is proper for us. When all throughout time, we have always known what is best for us. We continue to know what is best for us.

In terms of the protection of sacred sites and any facet of our lives that relate to the implementation of the Declaration, the Federal Government has to understand what it is that we are trying to say. And I believe that that will be the first step in making those changes to Federal policy.

I could not elaborate on the specific steps that need to be made. But we certainly have people who can articulate those specific measures. Mr. Chairman, we appreciate this opportunity.

The CHAIRMAN. Thank you very much, Mr. Yazzie.

Ms. Knight, how can the Declaration ensure that this era of self-determination continues into the future for all indigenous people?

Ms. KNIGHT. Thank you, Mr. Chairman. I have been giving some thought in terms of, the United States has made a good step with the advent of the 1975 Indian Education and Self-Determination Act. But very often, nations are still treated as vendors, as grantees, as contractors, and not necessarily as nations. Units of local government, even, and not necessarily as nations.

So advancement of a true nation to nation policy would be one area that I would recommend. There are still barriers to true self-determination. While we have the Act, it is not completely, fully realized. There are a lot of barriers. It also doesn't extend across the Federal Government. So one area to look at is, are there other applications of the Self-Determination Act that can be made in other agencies of the Federal Government. There have been studies and proposals done to that end.

Finally, in regard to land and the rights to determine what goes on on that land, over a decade ago, the Cherokee Nation, along with other of the Five Civilized Tribes, advanced land reform policy to change some of the detrimental effects of the 1906 Act that governs our lands in Oklahoma, that allows for adverse possession and allows for other means that lands can go out of the hands of Indians. And so policies like that, and I am sure there are pieces of legislation that affect other tribes across the Country in a similar way, that are detrimental to Native peoples holding onto their lands and how they are able to conduct activities on those lands should be examined. Thank you.

The CHAIRMAN. Thank you very much for your response.

I want to tell all of the witnesses and those present that for me, this has been a great hearing. At least we have brought the issue to bear here. And the kind of responses that this Committee has received will help us determine where we go next. As Ms. Sharp did mention that there are next steps that we need to take. We certainly want to do that.

So what we are doing now is to get ideas from you and put this together and see where we go from there. Mr. Yazzie, you had a comment.

Mr. YAZZIE. Mr. Chairman, as five-fingered brothers and sisters, and with a humble heart, I stand before you with an appeal to you and this honorable Committee. On behalf of my fellow commissioners, my elders, our children, our generations to come, this great Committee has been the champion of Native America for many years. We ask that this Committee, that your colleagues in this great institution stand with us at this time in defense of our earth mother.

The equilibrium of the earth is precariously out of balance. The increasing incidence of so-called natural catastrophe and climate change are no accident. They are undeniable messages from the earth mother that she grows weary of the unrelenting abuse. It

may be soon when the earth gives us that ultimate disaster, by giving a great convulsive shudder when she grows no longer tolerant.

As Native peoples, as indigenous peoples and keepers of the knowledge of the original intent, we are gravely concerned. We have something to say, we have something to offer. The key that we have may not avert the ultimate and inevitable fate of the earth. But what we have, we believe we can help heal the hurt and to provide hope for a future.

Mr. Chairman, western science is not enough. We must be at the table. It is our earth, too. And honorable sir, it is our life too. Thank you.

The CHAIRMAN. Thank you very much. That was a great statement.

Since we are at the close of this hearing, let me provide the opportunity for any other of the panel to speak at this time before we adjourn, if you wish to.

Mr. Ettawageshik?

Mr. ETTAWAGESHIK. These are great words that were just spoken. I want to endorse those thoughts and say that we have people standing all over this continent for achieving harmony, for trying to restore that harmony. We have people, while we are speaking, walking for the water right now, walking from the four directions, from Hudson Bay down to Lake Superior, from Maine west, from Washington State east, from the Gulf of Mexico north, carrying water and a eagle staff in each of those four directions, all getting ready to meet, and saying prayers for all the water that they come along on the way.

They are doing this, these are grandmothers that are doing this. These grandmothers are walking. They walk nearly four miles an hour. I have to tell you, it is hard to keep up with these ladies. But they are on a mission to help all of us. It is not, the water that is there is not water that is any one of ours. That water is sacred, and it is all of ours. That water is that sacred water of which we heard testimony from my brother here, who spoke about the need for the medicines and the water that they have.

This is something that is very important. And something as simple as walking carrying a bucket is something that each of us can do in our way, in our own hearts and our own lives. This is the things that we need to do. This is part of that traditional knowledge of which we were speaking when we talk about what the Declaration brings to light. We need to be at that table, as has been said. We are willing to be there, and we have gifts that we are willing to share. We thank you so much for this opportunity to share here and to share on the record for these things that will be, that can help to be the very savior of all of us here on this earth, to help these things. It is a perilous time. And I want to just once again stand with my brother here who spoke and the words that he spoke rang true in my heart and in my being. I feel very privileged to have been here to hear him speak.

The CHAIRMAN. Thank you very much for your statement. Yes, Ms. Sharp?

Ms. SHARP. Thank you.

The last thing I would like to leave this Committee with is, again, a recognition of the time and place that we now stand. We

have had many, many eras, many Presidents contend with the Indian issue. We have seen many laws, many policies, many regulations, many appropriation of dollars. It has not worked to the degree that we need to restore our communities, our children, our futures.

This opportunity to embrace the Declaration in totality is the beginning and the only path that we have if we are to see this Nation stand behind Indian people and allow us to seize our futures and to chart our own course successfully. Until we embrace and fully implement those basic principles, it is going to continue for centuries more into the future.

On behalf of the Quinault Nation, again, we thank you so much for this opportunity.

The CHAIRMAN. Thank you so much. Ms. Knight?

Ms. KNIGHT. Mr. Chairman, I would just reiterate my thanks for this Committee beginning the dialogue on how to implement the UN Declaration, and that we in Indian Country stand ready to work with you to determine how to implement this policy, whether it involves legislation or policy. Again, our thanks.

The CHAIRMAN. Thank you very much. I want to thank our witnesses, and all of our witnesses today for participating in today's hearing. I look forward to working with my colleagues on this Committee as we take your input to work to implement the policy goals expressed in the UN Declaration, so the United States may serve as a leader, as a leader and a model for other nations.

So in a way we need to all work together to achieve this, and to do it where the rights of indigenous peoples are concerned. This is why we are here at this hearing.

Again, I am repeating, the record is open for written testimony for two weeks. I will encourage all of you to submit testimony to the record.

Again, mahalo nui loa, thank you very much. This hearing is adjourned.

[Whereupon, at 4:55 p.m., the Committee was adjourned.]

A P P E N D I X

JOINT PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS AND THE NATIVE AMERICAN RIGHTS FUND

Chairman Akaka, Vice-Chairman Barrasso, distinguished members of the Senate Committee on Indian Affairs; the National Congress of American Indians and the Native American Rights Fund welcome the chance to address this committee on the important matter of the implications for federal domestic law of the U.S. endorsement of the United Nations Declaration on the Rights of Indigenous Peoples. On December 16, 2010, President Obama "announc[ed] that the United States is lending its support to this declaration [on the rights of indigenous peoples]. The aspirations it affirms – including the respect for the institutions and rich cultures of Native peoples – are ones we must always seek to fulfill...But I want to be clear: What matters far more than words – what matters far more than any resolution or declaration – are actions to match those words." This hearing is an important start to the process of analyzing what actions are, in fact, necessary to bring U.S. law into conformity with those areas of the Declaration in which it falls short. Some of those areas can be readily identified, but in others, a process of mutual cooperation between tribes and the U.S. to identify and formulate correctives will be necessary.

1. Plenary Power

There is perhaps no area of domestic law that needs more revision than that of plenary power. The doctrine has at least two meanings, one more benign and one totally unacceptable under the Declaration and international law. In its more benign form, the doctrine simply means that the federal government has the power to address dealings with indigenous peoples. But in its unacceptable form, it indicates that Congress has the authority to deal with indigenous peoples in virtually any way that it deems appropriate, including terminating the government to government relation with Tribes. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) ("...Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess."); *Washington v. Confederated Bands and Tribes of the Yakima Indian Reservation*, 439 U.S. 463 (1979) (refusing to recognize the right of the tribe to self-government as a fundamental right for purposes of equal protection analysis). The fact that 150 Nations recognize the right of self-determination by endorsing the Declaration completely undermines that version of the plenary power doctrine which describes congressional power over tribes as virtually unlimited. This doctrine needs to be replaced and the true inherent rights of indigenous peoples recognized as immune from Congressional action.

2. Specific Rights

a. Self-Determination.

Self-determination is at the heart of the Declaration and is the one group right that all countries acknowledge as a human right. Without this right, the Declaration would have been unacceptable to indigenous peoples. However, the United States interprets the right to self-determination by indigenous peoples in a restrictive manner that is at variance with the Declaration and international law. The endorsement states that "The United States is therefore pleased to support the Declaration's call to promote the development of a new and distinct international concept of self-determination specific to indigenous peoples....a concept that is different from the existing right to self-determination in international law....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 as political entities that have inherent sovereign powers of self-governance."

Two international covenants, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, provide in their common Article 1 that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹ Article 3 of the Declaration tracks this language precisely – substituting "Indigenous peoples" for "All peoples." The use of the same language is evidence of an intent to describe the same right. *Cf. Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995). Furthermore, the general rule is that if language is broad enough to encompass a situation not contemplated, it covers the situation absent proof it would have been excluded had it been contemplated. *Diamond v. Chakrabarty*, 447 U.S. 303 (1980) (patent language broad enough to cover living life forms even though not contemplated at the time the legislation passed). Not only is there no proof that the right to self-determination of indigenous peoples would have been diminished had it been contemplated, there is "legislative history" here to the contrary. Attempts were made by some countries for years to add limiting language to the self-determination provision and those attempts failed.

Moreover, additional language in the UN Declaration confirms that Article 3 falls within the scope of the international right. The preamble provides as follows in two separate paragraphs:

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, as well as the Vienna Declaration and Programme of Action, 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...

These paragraphs combine with Article 2 to make the matter clear:

Article 2

¹ See General Assembly Resolution 2200 (XXI) of 16 December 16, 1966.

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.

These provisions indicate that there is ample room for discussion concerning the need to revise U.S. law to bring it into compliance with the Declaration.

b. Lands, territories and natural resources.

The Declaration has broad provisions concerning rights to lands, territories and natural resources. Article 25 starts with the right of indigenous peoples 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." Article 26.1 provides that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." Article 26.2 refers to 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." Article 27 requires the establishment of a system to "recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources..." Article 28.1 provides for redress for lands "which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." Compensation is to take the form of "lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress." Article 28.2.

As to these provisions of the Declaration, the United States' explanation states that, "...the United States intends to continue to work so that *the laws and mechanisms it has put in place* to recognize existing, and accommodate the acquisition of additional, land territory, and natural resource rights under U.S. law function properly and to facilitate, as appropriate, access by indigenous peoples to the traditional lands, territories and natural resources in which they have an interest....The United States will interpret the redress provisions of the Declaration to be *consistent with the existing system* for legal redress in the United States, while working to ensure that appropriate redress is in fact provided under U.S. law." Pp 6-8 (emphasis added). The United States makes this statement even though: under U.S. law, aboriginal title is not recognized as compensable; *Tee-Hit-Ton v. United States*, 348 U.S. 272 (1955); under U.S. law, long standing Executive Order Reservations are not recognized as compensable even though only Congress can change their boundaries; *Karuk Tribe v. Ammon*, 209 F.3d 1366 (Fed. Cir. 2000) cert. den. 121 S.Ct. 1402 (2001); under U.S. law, it is becoming difficult, if not impossible, for tribes to get redress for loss of their aboriginal territory based on the passage of time. *Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005); *Cayuga Indian Nation of New York v. Pataki*, 413 F.3d 266 (2d Cir. 2005); *Oneida Indian Nation v. County of Oneida*, 617 F.3d 114 (2d Cir. 2010). In addition, land cannot be taken into trust for Indian tribes not recognized or under federal jurisdiction in 1934. *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009). The U.S. contention that it is doing its part to protect Indian land rights by supporting Indian tribes in these cases rings hollow, since all of these cases represent losses in the court system, showing that U.S. law at present is inadequate when measured against the Declaration. Clearly,

action is needed in this crucial area of the law to bring U.S. law in line with the Declaration's standards.

c. Free, Prior and Informed Consent

Article 19 of the Declaration provides that "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." The explanation of the U.S. vote once again waters this down. "In this regard, the 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...The United States intends to consult and cooperate in good faith with federally recognized tribes and, as applicable, Native Hawaiians, on policies that *directly and substantially affect them*, and to improve our cooperation and consultation processes, *in accordance with federal law and President Obama's call for better implementation of Executive Order 13175.*"² p. 5 (emphasis added). Article 19 refers to efforts to obtain free, prior and informed consent of indigenous peoples for measures that "may affect" while the US explanation refers to "meaningful consultation" only in matters which "directly and substantially affect them", a substantially modified standard. In addition, the concept of "meaningful consultation" is a far cry from "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own indigenous institutions *in order to obtain their free, prior and informed consent...*"

Related to free, prior and informed consent is Article 18 of the Declaration that provides that 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..."³ Serious consideration needs to be given to formalizing a process that ensures full implementation of this provision.

3. Collective Rights as Human Rights

The Declaration acknowledges collective human rights, and thereby provides a corrective to the western human rights framework, which is heavily weighted toward individual human rights.² Indigenous peoples have typically not been at the table when international rights documents, such as the Universal Declaration of Human Rights (UDHR), have been elaborated. As a result, their collective human rights have not been adequately taken into account.³ Indigenous peoples therefore were adamant that the Declaration focus on their collective human

² For a discussion of the differences in thinking underlying notions of individual and collective rights, and the necessity for protection of indigenous collective human rights, see, Robert N. Clinton, *The Rights of Indigenous Peoples as Collective Group Rights*, 32 ARIZ. L. REV. 739 (1990).

³ As to the western bias in international human rights in general, see, Richard Falk, *Think Again: Human Rights, FOREIGN POLICY*, (March/April 2004).

rights. They were successful in this, as the document recognizes a broad range of collective human rights.⁴

The explanation of its vote indicates that the United States does not share the view that collective rights of indigenous peoples are human rights. "Moreover, the United States is committed to serving as a model in the international community in promoting and protecting the collective rights of indigenous peoples as well as the human rights of all individuals. ... Indigenous individuals are entitled without discrimination to all human rights recognized in international law, and ... indigenous peoples possess certain additional, collective rights. The United States reads all of the provisions of the Declaration in light of this understanding of human rights and collective rights."⁵

The U.S. statement is inconsistent with the Declaration itself. The Declaration states in 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 Rights and international human rights law." The explanation is not even in harmony with the law of the United States. Normally, only a right of equal or greater value can override another right, and U.S. law has recognized that the collective rights of tribes can override individual human rights. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989) (collective interest of tribes in membership of their children overrides the right of parents to, in all cases, place a child with the adoptive parents it chooses or to proceed in whatever court they desire).

4. Conclusion

The endorsement of the Declaration by the U.S. was a huge step forward, but now actions must match the words. A good start would be for the U.S. to form a joint federal/tribal commission to develop a comprehensive plan for implementation of the Declaration. The U.S. should also consider directing each federal agency to: 1) require its employees to familiarize themselves with the Declaration and its contents; 2) conduct a comprehensive review of the extent of its compliance with the Declaration in order to identify those areas where they fall short; and 3) present a plan for achieving full compliance by a date certain.

NCAI and NARF thank the Committee for its interest in the Declaration and offer their cooperation in the future to work, hand in hand, to implement it.

⁴ See e.g. Art. 3 (self-determination); Art. 8 (right to freedom from assimilation or destruction of their culture); Art. 10 (right to remain on their lands); Arts. 11 and 12 (right to their maintain their cultures, customs, traditions, etc.); Art. 23 (right to traditional medicines); Art. 31 (right to their cultural heritage, traditional knowledge, etc.); Art. 37 (right to respect for their treaties, agreements and other constructive arrangements).

⁵ Some other countries agree with the United States. The United Kingdom explained that they were voting for the document with the understanding that the only collective human right in the document is the right to self-determination. According to the UK, other collective rights recognized in the Declaration are not human rights, since, in their view, human rights belong to all people and many of the rights in the Declaration pertain only to indigenous peoples. (Oral statement on September 13, 2007).

JOINT PREPARED STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION AND THE
HUMAN RIGHTS AT HOME CAMPAIGN

I. Introduction

Chairman Akaka, and Members of the Senate Indian Affairs Committee:

On behalf of the American Civil Liberties Union (ACLU) and the Human Rights at Home Campaign (HuRAH), we commend the Senate Indian Affairs Committee for conducting this oversight hearing and fostering much-needed dialogue about the domestic policy implications of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The ACLU is a nationwide, non-partisan organization dedicated to enforcing the fundamental rights set forth in the Constitution and United States laws. The ACLU's Human Rights Program, created in 2004, is dedicated to holding the U.S. government accountable to universal human rights principles, in addition to the rights guaranteed by the U.S. Constitution. HuRAH is a coalition of more than 50 human rights, civil rights and social justice organizations, working to establish an infrastructure to implement, enforce and monitor U.S. compliance with domestic human rights treaty obligations. We submit this written statement for the record to applaud the administration's endorsement of the Declaration, but also to highlight areas in need of significant improvement and make recommendations for implementing the Declaration.

II. U.S. Endorsement of the Declaration

On December 16, 2010, at his administration's second White House Tribal Nations Conference, President Obama announced that the United States would sign the Declaration on the Rights of the Indigenous Peoples.¹ The government's qualified² endorsement of the Declaration—which comprises “the minimum standards for survival,

¹ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/61/L.67 (Sept. 13, 2007) [hereinafter UNDRIP].

² See International Indian Treaty Council, *United States of America Announces Qualified Support for the UN Declaration on the Rights of Indigenous Peoples* (Dec. 16, 2010), available at <http://www.treatycouncil.org/PDF/IITC%20statement%20on%20US%20Endorsement%20FINAL121610rev1.pdf>.

dignity and well-being of the indigenous peoples of the world”³—marked an important reversal of the previous administration’s policy, which had voted against the Declaration at the United Nations in 2007 even in the face of overwhelming international support. As President Obama rightly stated in his announcement, “[t]he aspirations [the Declaration] affirms—including the respect for the institutions and rich cultures of Native peoples—are one[s] we must always seek to fulfill.”⁴

Still, while the endorsement of the Declaration was a positive step, it must be accompanied with real, material improvements in the protection and realization of human rights of indigenous peoples. As the President himself remarked, “[w]hat matters far more than words, what matters far more than any resolution or declaration, are actions to match those words.”⁵ Similarly, when he announced his Chairmanship of the Senate Committee on Indian Affairs, Chairman Akaka committed “to address the complex issues facing the indigenous people of our country.”⁶ We urge Congress and the President to give force to the Declaration and meet its obligations under human rights treaties, particularly the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), as well as the 400 nation-to-nation treaties into which the United States has entered with indigenous nations. If Congress and the President follow the below recommendations they would match rhetoric with action, helping to transform the aspiration of indigenous rights into reality.

III. UNDRIP Implementation

In implementing the recommendations below, it is imperative that Congress and the administration work with state and local governments, make outreach efforts to the wider public, engage in constructive dialogue with civil society, and continue President Obama’s commendable policy of conducting regular and meaningful consultations with indigenous peoples, tribal governments and nations. Full and fair participation of indigenous peoples is indispensable to successful implementation of the UNDRIP.

a. Self-Determination

Self-determination is more than a core tenet of the UNDRIP—it is the Declaration’s umbrella principle, encompassing a number of other fundamental legal rights. Article 3 affirms that “[i]ndigenous peoples have the right to self-determination,” and Article 4 states that this right entitles indigenous peoples to “autonomy or self-

³ UNDRIP, *supra* note 1, art. 43.

⁴ President Barack H. Obama, Remarks at the White House Tribal Nations Conference (Dec. 16, 2010), available at <http://www.gpo.gov/fdsys/pkg/DCPD-201001076/pdf/DCPD-201001076.pdf>.

⁵ *Id.*

⁶ Press Release, Senator Akaka to Chair Indian Affairs Committee, join Democratic Leadership team, Jan. 27, 2011, available at <http://akaka.senate.gov/press-releases.cfm?method=releases.view&id=47924f0e-b96b-4b34-9acd-74b3ecd97d27>.

government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”⁷ Despite President Nixon’s pledge over 40 years ago to “break decisively with the past and . . . create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions,”⁸ the promise of indigenous self-determination remains unfulfilled. In implementing the recommendations below, all of which are fundamental to self-determination, the government should be guided by the principles of the UNDRIP and work in partnership with indigenous peoples to protect and realize their human rights.

b. Property Rights

Part and parcel of the right to self-determination is protection for tribal property rights. Under UNDRIP Article 28, indigenous peoples have the right to redress for lands and resources that are wrongfully taken from them.⁹ That the Fifth Amendment takings clause does not apply to some tribal lands—allowing for the extinguishment of aboriginal rights through the “plenary power of Congress”—contravenes the Declaration, and is inconsistent with U.S. obligations under the ICCPR.¹⁰ In addition, the United States’ policy of “permanent trusteeship” over native tribes and land infringes on Declaration Article 27—guaranteeing indigenous peoples’ right to own, use, develop and control their lands¹¹—and also threatens to violate the ICCPR.¹² Congress should enact legislation providing greater judicial protection for tribal property rights and transferring control over property to indigenous peoples.

c. Free, Prior and Informed Consent

Another prerequisite to indigenous self-determination is the notion of free, prior and informed consent, enshrined in a number of the Declaration’s articles.¹³ As the International Indian Treaty Council noted in its written testimony, “[w]ithout consent there is no certainty of self-government, nor equity or equality in the ‘government to government’ relationship.”¹⁴ The President’s announced policy of “consultation,” while a

⁷ UNDRIP, *supra* note 1, arts. 3, 4.

⁸ President Richard M. Nixon, Special Message on Indian Affairs (July 8, 1970), available at <http://www.epa.gov/tp/pdf/president-nixon70.pdf>.

⁹ UNDRIP, *supra* note 1, art. 28.

¹⁰ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: United States of America*, ¶ 37, 87th Sess., July 10–28, 2006, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) [hereinafter Human Rights Committee Report].

¹¹ UNDRIP, *supra* note 1, art. 27.

¹² Human Rights Committee Report, *supra* note 10, ¶ 37.

¹³ UNDRIP, *supra* note 1, arts. 10, 11(2), 19, 28(1), 29(2), 32(2).

¹⁴ International Indian Treaty Council, Written Testimony to the United States Senate Committee on Indian Affairs (June 9, 2010), available at

step in the right direction, falls short of the standard of free, prior and informed consent. Pursuant to U.S. obligations under the Declaration and ICERD,¹⁵ the government should review its current policy, and ensure that the “development” of indigenous lands—which often has serious environmental consequences for areas of cultural and spiritual significance for Native Americans—occur only with their free, prior and informed consent.

d. Public Safety and Jurisdictional Authority

Cognizant that jurisdictional authority goes hand-in-hand with self-determination, we also urge Congress to enact federal laws increasing the legal authority of tribes within their own jurisdictions. The passage of the Tribal Law and Order Act in 2010 was an important and laudable step in this regard, but more needs to be done. Jurisdictional barriers continue to contribute to domestic and sexual abuse against Native American women, among whom the rate of violent victimization is more than double that among other women.¹⁶ Pursuant to UNDRIP Article 22, which requires states to protect indigenous women and children against all forms of violence and discrimination,¹⁷ articles 5(b) and 6 of ICERD,¹⁸ as well as the recent recommendations of the UN Special Rapporteur for Violence Against Women,¹⁹ we call on Congress and the President to eliminate impediments to public safety on tribal lands. Specifically, the government should: ensure full implementation of the Violence Against Women Act and Tribal Law and Order Act, including by providing the necessary funding; restore tribal authority over non-Indians who perpetrate violent crimes on tribal lands; and establish accountability for the failure to investigate and prosecute crimes against Native American women.

e. Economic and Social Disparities

Also indispensable to genuine autonomy and self-government is the elimination of economic and social disparities. The conditions on many Native American reservations—including high unemployment, poverty and crime rates—present an

<http://www.treatycouncil.org/PDF/ITC%20Comments%20to%20the%20US%20Senate%20Committee%20on%20Indian%20Affairs%20UN%20Declaration%202011.pdf>.

¹⁵ Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 29, 72nd Sess., Feb. 18–Mar. 7, 2008, U.N. Doc. CERD/C/USA/CO/6 (May, 8, 2008) [hereinafter CERD Report].

¹⁶ Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Rep. on Mission to United States of America*, Human Rights Council, ¶ 62, U.N. Doc. A/HRC/17/26/Add.5, (June 1, 2011) (by Rashida Manjoo) [hereinafter SRVAW Report]. See also AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007).

¹⁷ UNDRIP, *supra* note 1, art. 22.

¹⁸ CERD Report, *supra* note 15, ¶ 29.

¹⁹ SRVAW Report, *supra* note 16, ¶ 115(D).

impediment to indigenous peoples' opportunity to fully participate in society. In accordance with UNDRIP Article 21, which entitles indigenous peoples "to the improvement of their economic and social conditions," we echo the recommendations of the UN Special Rapporteur on Racism²⁰ and urge Congress to do more to address Native American disparities in education, housing, employment, health, income, and other areas.

f. Oversight of Executive Branch

It is also crucial to reiterate²¹ the Executive Branch's critical role in implementing human rights commitments, including those under the UNDRIP, and the need for robust congressional oversight of this implementation. The Executive Branch has both the resources and responsibility to ensure enforcement of human rights, and it must work closely with Congress by providing support for enabling legislation and testifying regarding human rights treaty implementation.

Moreover, Congress should ensure that the Executive Branch is coordinating effectively around human rights issues. To that end, members of Congress should call on the Obama administration to establish an Interagency Working Group on Human Rights. President Clinton first created such a Working Group under Executive Order 13107 that was effectively disbanded under President Bush. The reinstatement of the Clinton era Working Group through a new expanded Executive Order would be a robust, efficient and transparent way of integrating human rights across a broad range of government agencies; it would create, in one standing body, an identifiable focal point for an administration's human rights policy work. The Working Group is an essential mechanism for promoting and implementing the UNDRIP, as well as other corresponding human rights obligations.

g. Processes for Resolving Disputes & Enforcing Treaties

The United States also lacks processes for fairly resolving disputes between indigenous peoples and the government and for ensuring United States adherence to treaties concluded with indigenous nations. Pursuant to Article 27 of UNDRIP, Congress should establish a just and fair process for resolution of disputes with the government that includes the full participation of the Indigenous Peoples and that gives due consideration to the indigenous customs, traditions, rules and legal systems. In fulfillment of UNDRIP Article 37, which declares that indigenous peoples have the right to treaty enforcement,

²⁰ Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, *Rep. on Mission to United States of America*, ¶ 98, Human Rights Council, U.N. Doc. A/HRC/11/36/Add.3, (Apr. 28, 2009) (by Doudou Diène).

²¹ See *The Law of the Land: U.S. Implementation of Human Rights Treaties: Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. 95-96 (2009) (statement of Jamil Dakwar, Director, ACLU Human Rights Program, and Michael W. Macleod-Ball, Acting Director, ACLU Washington Legislative Office, American Civil Liberties Union).

Congress should also take steps to implement an equitable and just process or mechanism to review implementation of Treaties concluded with indigenous nations and to redress and resolve violations and unmet obligations.

IV. Conclusion

In both its endorsement of the UNDRIP and its stated commitment to “support[] tribal self-determination, security and prosperity for all Native Americans,”²² the Obama administration has done much to distinguish itself from its predecessor, and deserves credit for doing so. Chairman Akaka has also demonstrated strong leadership in holding this extensive hearing on domestic implementation of UNDRIP. However, the administration and Congress must now follow through on these commitments with the right policies and oversight mechanisms. Only through swift, effective, and comprehensive action can this country and its indigenous peoples “move ahead together in writing a new, brighter chapter in our joint history.”²³

²² President Barack H. Obama, *Presidential Proclamation—National Native American Heritage Month* (Oct. 29, 2010), available at <http://www.whitehouse.gov/the-press-office/2010/10/29/presidential-proclamation-national-native-american-heritage-month>.

²³ *Id.*

PREPARED STATEMENT OF AMNESTY INTERNATIONAL USA’S NATIVE AMERICAN AND ALASKA NATIVE ADVISORY COUNCIL

The Honorable Chairman Akaka and Members of the Committee:

On behalf of Amnesty International USA’s Native American and Alaska Native Advisory Council, we would like to express our deep appreciation and thanks for inviting Amnesty International USA to submit written testimony for the hearing held on June 9th, 2011 for “Setting the Standard: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).” As you may know, Am-

nesty International is a world-wide grassroots human rights movement with over 3 million members worldwide, and on behalf of nearly half a million members here in the U.S., thank you for the opportunity to submit written testimony for the Congressional record.

We applaud the Administration's long-awaited endorsement of the UN Declaration on the Rights of Indigenous Peoples this past December 2010 and the leadership role that President Obama and the Administration have taken in addressing the issues that Indigenous populations face here in the United States. The U.S. endorsement of the Declaration is a long-awaited step in the right direction and demonstrates leadership and commitment to upholding and ensuring the universal human rights of all peoples. On behalf of Amnesty International, we continue to urge the U.S. government's full and unqualified adoption of the human rights principles articulated in the UNDRIP. Additionally, we call on Congress and the Administration to work in full partnership and consultation with Indigenous peoples, tribal governments and nations to best address the human rights abuses that Native American and Alaska Native peoples face in the U.S.

There have been many important issues raised around which Indigenous issues must be addressed in order to uphold the U.S.'s obligations to the UNDRIP. We believe what merits immediate and continued attention from the Committee, Congress, and the U.S. government, is the ongoing effort to end the horrific rates of sexual violence perpetrated against Native American and Alaska Native women with impunity.

The U.S. Federal Government has a legal responsibility under the federal trust responsibility to ensure protection of the rights and wellbeing of American Indian and Alaska Native peoples. This federal trust responsibility is set out in treaties between tribal nations and the federal government, further solidified in federal law, federal court decisions and policy. It includes the protection of the sovereignty of each tribal government. The U.S. government has specifically recognized that this responsibility extends to assisting tribal governments in safeguarding the lives of Indian women. However, the capacity of tribal governments to uphold the rights of their citizens is constrained by legal limitations on their jurisdiction imposed by federal law and, in many cases, by the fact that the funds for the services they deliver are controlled by federal agencies.

As this Committee knows well, the rates of sexual violence perpetrated against Native American and Alaska Native women in the U.S. are at epidemic proportions—more than one of three Indigenous women will be raped in their lifetimes and the rates of sexual violence perpetrated against Indigenous women in the U.S. are 2.5 times higher than those of women in the U.S. in general. In order to achieve justice, survivors of sexual violence frequently have to navigate a maze of federal, state and tribal law. The U.S. Federal Government has created a complex interrelation between these three jurisdictions that undermines equality before the law and often allows perpetrators to evade justice. In some cases this has created areas of effective lawlessness which encourages violence. Continued and concerted action by the U.S. Congress is necessary to eliminate any possibility that the complex jurisdictional rules and legislation in practice may deny survivors of sexual violence access to justice.

The Senate Committee on Indian Affairs has demonstrated its leadership on this issue by passing legislation such as Pub. L. 111-211, the Tribal Law and Order Act of 2010, and by working with the Administration to make additional policy changes such as ensuring the addition of federal agents and U.S. Assistant Attorney Generals to Indian Country, which will begin to help improve public safety and ensure justice services to survivors of sexual violence in Indian Country. Yet much more remains to be done.

Amnesty International strongly urges Congress and the Administration to continue to prioritize ending sexual violence against Native American and Alaska Native women in the U.S. The U.S. government has a legal responsibility to ensure the well-being and safety of all its citizens. The legacy of abuse, disempowerment and erosion of tribal government authority, and the chronic under-resourcing of law enforcement agencies and services which should protect Indigenous women from sexual violence must be reversed.

As a starting point for upholding and demonstrating the United States' unqualified support and commitment to the UNDRIP, we urge this Committee to evaluate and ensure the full and timely implementation of Pub. L. 111-211, including by ensuring full funding, resources, and agency capacity as necessary and required for full implementation of the law. PL 111-211 will begin to address the long-standing public safety and justice services disparities in Indian Country, by beginning to restore to tribal governments the authority and resources to protect their citizens.

Yet, despite the strides made by Congress and the Administration to restore tribal authority, true tribal empowerment and sovereignty will not be possible without the reversal of the Supreme Court's 1978 ruling on *Oliphant vs. Suquamish*, which stripped tribal governments of the authority to prosecute non-Indian perpetrators for crimes committed on tribal lands, and particularly undermines and denies due process and equal protection for many Indigenous survivors of sexual violence. We therefore urge the US Congress to recognize the concurrent jurisdiction of tribal authorities over all crimes committed on tribal land, regardless of the Indigenous identity of the accused, including by legislatively overriding the U.S. Supreme Court's decision in *Oliphant v. Suquamish*.

While we recognize the difficulties posed by the current budget climate, we further call on Congress to fully support the President's FY12 budget request as relevant to the full and necessary funding for agencies and programs affecting Indigenous persons in the U.S. This includes but is not limited to increased funding for the Indian Health Service in order to ensure the timely and appropriate collection of forensic evidence, the specific designation of increased appropriations for tribal law enforcement training programs, and specific funding allocations within the Office of Violence Against Women in the Department of Justice to ensure specific analysis, research and data collection on violence against Indigenous women and the development of a national clearinghouse to provide information and technical assistance on violence against Indigenous women.

Chairman Akaka and the Committee, we are grateful for the opportunity to submit written testimony and for your continued leadership and partnership with the Indigenous people of the U.S. Both Congress and the Obama Administration have demonstrated a renewed commitment to addressing the urgent and pressing concerns of Indigenous peoples. Endorsement of the UNDRIP further demonstrates commitment and the opportunity for the U.S. to overcome a long history of injustice. Thank you for the Committee's time and consideration.

*Amnesty International's *MAZE OF INJUSTICE—The failure to protect Indigenous Women from Sexual Violence in the USA* has been retained in Committee files and can be found at <http://www.amnestyusa.org/pdfs/MazeOfInjustic.pdf>.

PREPARED STATEMENT OF ALAN R. PARKER, SECRETARY, UNITED LEAGUE OF
INDIGENOUS NATIONS

Chairman Akaka and Members of the Indian Affairs Committee, United States Senate, I am pleased to have the opportunity to provide testimony to you regarding implementation of the UN Declaration on the Rights of Indigenous Peoples. I am testifying in my capacity as "Secretary" to the United League of Indigenous Nations.

History of the United League of Indigenous Nations

The United League was formed by Treaty Agreement between U.S. Tribal Nations, 1st Nations of Canada, Maori Tribal Nations of New Zealand and the Ngerrindjeri Aborigine Peoples of Southwest Australia. The United League Treaty was negotiated in August 2007 on the lands of the Lummi Indian Nation that are located in NW Washington State. The meeting at Lummi was sponsored by the National Congress of American Indians who had created a Special Committee on Indigenous Nation Relations at their 2005 Annual Conference. I was appointed by the NCAI Executive Board to serve as Co-Chair of the Special Committee along with Juana Majel, a legislative representative of the Pauma Band of the Loisanos Indian Nation of Southern California. Juana Majel currently serves as the 1st Vice President of the National Congress of American Indians. A series of meetings took place between U.S. Tribal delegates who served as members of the NCAI Special Committee and representatives of other Indigenous Nations of the Pacific Rim. As a result of this work, the Special Committee developed a "draft Treaty Agreement" designed to establish political and economic alliances among the Indigenous Nations of the Pacific Rim. A key step in the process defining the focus of our work resulted from our deliberations which took place in December of 2005 when we met in Whakatane, NZ at the invitation of the Mataatua league of Maori Tribal Nations. When this group was convened at the Lummi Nation in August 2007, final terms of the Treaty were negotiated and signed by representatives of eleven nations who had been authorized by their respective governing bodies to sign the Treaty and commit their nation to its terms. Since this meeting in August 2007, 84 Indigenous Nations have signed the Treaty and more are expected to join in the near future.

Historical Background to the UN Declaration

Mr. Chairman, I am confident that you will hear today from witnesses who are more knowledgeable about the Historical Background to the Declaration on the

Rights of Indigenous Peoples and the steps that led to its adoption by a vote of the General Assembly of the UN on September 13, 2007. My purpose in providing this testimony on behalf of the United League is to provide you with a perspective of Indigenous Nations as distinguished from private individuals and organizations who have been active in the multiyear effort to develop the language of the Declaration. Many of these activist leaders did their work with the support of their own Indigenous Communities, such as the Navajo Nations and the Iroquois League, and they working through the various Non-Governmental Organizations (NGO's) who had been able to gain NGO credentials from the UN. No doubt many of these Indigenous Leaders also held office within the governing bodies of their communities. While you are aware that the history of this work makes it clear that the carefully crafted language of the Declaration purposely used the terms "Indigenous Peoples" to refer to the "Collective" as well as the individual rights and concerns of the Indigenous Peoples in a Global Context, I believe that the primary focus and purpose of the "Working Group on the Rights of Indigenous Peoples" was to address the "Collective interests and rights of Indigenous Peoples".

Mr. Chairman, you and the members of this Committee are aware that U.S. Policy has, from the beginnings of the founding of this Nation, recognized the proper legal and political status of U.S. Tribal Nations. The U.S. Constitution provides for the development of Treaty Relationships between the United States and Tribal Nations. As we know, a Nation State doesn't enter into treaties with individuals or Non-Governmental Organizations but with other nations. The Commerce clause of the U.S. Constitution also authorizes the Executive Branch of the United States to regulate "Commerce" between the States and with the U.S. Tribal Nations. Beginning with its *Cherokee Nation vs. Georgia* decision of 1832, the U.S. Supreme Court has recognized and defined the U.S. Tribal Nations as "domestic dependent nations" possessing "inherent rights of sovereignty" such as may be necessary to govern their own lands and people. Consequently, I would like to turn now and address the distinctive questions and issues raised by your hearing on the topic of "Implementing" the UN Declaration.

In November of 2010, it was my privilege to participate in the work of the Cultural Concerns and the Law and Governance Committees of the Nations Congress of American Indians during the time that they were in session at their 2010 Annual Meeting in Albuquerque, NM. I assisted in the drafting of what is now known as Resolution #ABQ-1-064. (A copy of the resolution is attached to my testimony) This NCAI Resolution is entitled: "Calling for the United States to Endorse the United Nations Declaration on the Rights of Indigenous Peoples". Prior to the November meeting of the NCAI, I had the opportunity to serve as an advisor to the Affiliated Tribes of Northwest Indians, a regional organization of 54 Tribal Nations, at their 2010 annual meeting. During this meeting in Spokane, Washington, I drafted the text of their resolution on the UN Declaration which was subsequently adopted by the NCAI Cultural Concerns Committee.

In the 7th "Whereas clause" of the NCAI resolution, it provides. . .

WHEREAS, at the Department of State Consultation session in July (2010) in Washington DC, the Lummi Nation was requested by the Department of Interior, without objections from the Department of State, to secure a coordinated national legal position of Indian Country as to recommendations and justification for securing U.S. Support for the Declaration and developed the following recommendations with the concurrence of the Affiliated Tribes of Northwest Indians: (1) President Obama should create a National Commission comprised of American Indian and Alaska Native leaders, as well as representatives of the Departments of State, Interior and Justice to develop a plan for implementing the Declaration; (2) The Obama Administration should recommend to the UN that they modify their practice and policy of treating Indigenous Nation delegates to UN functions as NGO representatives, and instead should create a special category of Indigenous Nation Governmental Representatives with the rights and privileges of submitting their views and testimony directly to UN Agencies; and (3) The Obama Administration should request that the laws and standards known as Intellectual Property and administered by the World Intellectual Property Organization of the UN should be adjusted to accommodate the concerns of Indigenous Peoples regarding their unique cultural resources; and. . . (the resolutions continues)

The NCAI resolution, # ABQ-10-064, concludes by calling upon President Obama to officially change the position of the United States and accept and support the Declaration, not merely as an "aspiration" but as obligatory principles of International Law. The Resolution then, in a later paragraph, calls for the development of a Native American & Alaska Native Commission to develop rec-

ommendations for implementation of the provisions of the Declaration and address their relevance to the duties and responsibilities of the different federal departments and independent agencies of the Federal Government.

Mr. Chairman, I believe that your hearing is an important step in the process of developing the future policies of this United States government. By joining with President Obama who, during his meeting with Tribal Leaders in Washington, DC on December 16, 2010, expressed to the assembled Tribal Leaders that he had decided to change the position of the U.S. to one of supporting the UN Declaration. I recommend that your Committee inform President Obama that you have also reviewed the recommendations of the National Congress of American Indians and that you agree with their proposal that a Joint Commission on Implementation be established as soon as reasonably possible. The Declaration was not meant to be simply a piece of paper, it is meant to serve as a "Standard" whereby the laws and policies of the United States should be reviewed and examined. The task of conducting such an examination should not take years and years; it should be done carefully and expediently. It should be done in a manner that provides opportunity for U.S. Tribal Nations and their people to work together with the Administration and the U.S. Congress to address the recommendations of the Joint Commission on Implementation. Thank you again for the opportunity to submit this testimony and I would be pleased to respond to any questions you may have,

Attachment

NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-10-064TITLE: Calling for the United States to Endorse the United Nations Declaration
on the Rights of Indigenous Peoples

EXECUTIVE COMMITTEE

PRESIDENT

Eliciaaa Beet
Chickasaw Nation

FIRST VICE-PRESIDENT

Janaa Mihal Dhan
Pawnee Nation - Oklahoma

SECOND VICE-PRESIDENT

William Wilson
Pawnee Band of Oklahoma

TREASURER

W. Ron Adim
Director 2008-10-30

REGIONAL VICE-PRESIDENTS

ALASKA

William Alaka
Central Council Tlingit & Haida

EASTERN OKLAHOMA

Cora Cowan White
Cherokee Nation

GREAT PLAINS

Rafida "Paul" Duvette
Ratonsnake Tribe

MIDWEST

Midge Anderson
Mille Lacs Band of Ojibwe

NORTHEAST

Lance Guffey
Shenandoah Indian Nation

NORTHWEST

Brian Oakesley
Suquamish Tribal Community

PACIFIC

Don Arnold
Snohomish Band of Pomo Indians

ROCKY MOUNTAIN

Scott Russell
Crow Tribe

SOUTHEAST

Larry Townsend
Iroquois Nation

SOUTHERN PLAINS

Robert Thompson
Comanche Nation

SOUTHWEST

Jill Garcia
Ojibwe-Chickasaw

WESTERN

Irene Durr
Ute Indian Tribe

EXECUTIVE DIRECTOR

Broquette Johnson Pace
2008

NCAI HEADQUARTERS

1946 P Street, N.W.

Washington, D.C. 20008

202-462-7267

202-462-7297 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, 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 is concerned about assuring that the decades of work dedicated to the "Drafting" of the United Nations Declaration on the Rights of Indigenous Peoples are not forgotten; and

WHEREAS, the "Drafting" of the Declaration was the mutual work of Indigenous Peoples and Leadership from all over the World, which included Indigenous Peoples of the Red, Black, White, and Yellow Races of Humanity; and

WHEREAS, the United Nations ratified the Declaration on the Rights of Indigenous Peoples on September 13, 2007, by a vote of 144 states in favor of approval, 4 votes against (Australia, Canada, New Zealand, and United States), with 11 abstentions; and

WHEREAS, since its adoption, Australia, New Zealand and Canada have reversed their positions and now endorse the Declaration, Columbia and Samoa have indicated their support (they abstained originally), and President Obama, through Ambassador Susan Rice's April 20, 2010 statement to the UN Permanent Forum on Indigenous Issues, has indicated he would review his position regarding the Declaration and subject this question of support for the Declaration to the process of "Consultation" with the Indian Tribes, a process being addressed and co-coordinated by the Department of State; and

WHEREAS, UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya made the following statement on October 18, 2010: "The Declaration on the Rights of Indigenous Peoples is now the principal instrument of the United Nations system for measuring the human rights conditions of indigenous peoples around the world and identifying action needed to address those conditions...A starting point for the effective implementation of the Declaration is a firm commitment by States and the United Nations system to its rights and principles that is free from vague assertions that the Declaration is not obligatory;" and

WHEREAS, at the Department of State Consultation session in July in Washington, the Lummi Nation was requested by the Department of Interior, without objections from the Department of State, to secure a coordinated national legal position of Indian Country as to recommendations and justification for securing U.S. support for the Declaration and developed the following recommendations with the concurrence of the Affiliated Tribes of Northwest Indians: (1) President Obama should create a National Commission comprised of American Indian and Alaska Native leaders, as well as representatives of the Departments of State, Interior and Justice to develop a plan for implementing the Declaration; 2) The Obama Administration should recommend to the UN that they modify their practice and policy of treating Indigenous Nation delegates to UN functions as NGO representatives, and instead should create a special category of Indigenous Nation Governmental Representatives with the rights and privileges of submitting their views and testimony directly to UN agencies; and 3) The Obama Administration should request that the laws and standards known as Intellectual Property and administered by the World Intellectual Property Organization of the UN should be adjusted to accommodate the concerns of Indigenous Peoples regarding their unique cultural resources; and

WHEREAS, the NCAI hereby calls upon President Obama to officially change the position of the United States by informing the General Assembly of the United Nations that the United States now supports the Declaration, and the NCAI member tribes agree with this recommendation.

NOW THEREFORE BE IT RESOLVED, that the NCAI supports the recommendation of the National Congress of American Indians that the United States should immediately accept and support the Declaration, not as merely aspirational but as obligatory principles of international law, and clearly recommends that the Department of Interior and Department of State advocate support of the Declaration to President Obama; and

BE IT FURTHER RESOLVED, that the NCAI recommends that President Obama consider the development of a Native American & Alaskan Native Commission to develop recommendations for implementation of the provisions of the Declarations and address their relevance to the duties and responsibilities of the different federal departments and independent agencies; and

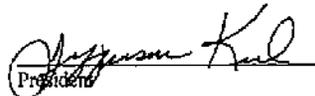
BE IT FURTHER RESOLVED, that the NCAI calls upon the various regional, national, and international Native American/Intertribal organizations (e.g., WIGA, CERT, NWIFC, CRIFC, USET, NTEC, NIEA, AIHEC, NIGA, and others) to assist in the enactment and ratification phase of this international declaration, once supported by the United States; and

BE IT FURTHER RESOLVED, that NCAI continues to support the Universal Covenant on Civil and Political Rights of Indigenous peoples under international law, including the U.N. Charter; and

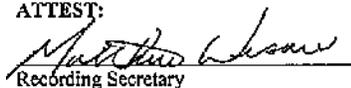
BE IT FINALLY RESOLVED, that this Resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2010 Annual Convention of the National Congress of American Indians, held at the Albuquerque Convention Center in Albuquerque, NM on November 14-19, 2010, with a quorum present.


President

ATTEST:


Recording Secretary

PREPARED STATEMENT OF THE INTERNATIONAL INDIAN TREATY COUNCIL

Dear Senate Indian Affairs Committee members

Please receive our respectful Greetings,

The International Indian Treaty Council (IITC), the first Indigenous Non-Governmental Organization (NGO) accorded Consultative Status by the United Nations Economic and Social Council (1977), is pleased that the Senate Committee on Indian Affairs (the Committee) is holding oversight hearings on the domestic policy implications of the United Nations Declaration on the rights of Indigenous Peoples (hereinafter "the Declaration"), now a universal aspiration of the international community.

We ask that the Committee receive and consider the IITC's following comments and recommendations for action by the United States Senate, on this matter of great importance to the Indigenous Peoples in the United States.

The Declaration should be viewed as an urgent expression of the thousands of Indigenous Peoples, Nations, and Organizations from all over the world that participated in its drafting, beginning in 1982 at the UN Working Group on Indigenous Populations and ending with its adoption by the General Assembly in 2007.

In many respects the Declaration is a response to the tragic history of colonization of Indigenous Peoples and around the world, including in the US. The preamble affirms that the United Nations and its member states are "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.” In this context, the full implementation of the Declaration by the US at the National level, and integration of its rights and principles into national laws, policies and practices would do a great deal to further the recognition of the dignity and rights of Indigenous Peoples, the first Nations of this land, their cultures, identities and world views. It would greatly assist in the promotion of a just and positive future and provide a framework for positive relations between Indigenous Peoples and the United States.

US policy toward Indians continues to change. The Trail of Tears and resultant policy of “Relocation,” oppression and genocide (1828-1887) followed by the Dawes Act and the policy of “Allotment and Assimilation that lasted until 1934, have all contributed to our tragic history. Policies of assimilation such as the forced and many time violent removal of generations of Indian and Native children to Boarding Schools, begun in the late 1800s, continue to have a range of traumatic impacts on its victims and their descendants today, as well as social, cultural and physical disruption and the loss of language for whole Nations and communities. The relatively brief respite of the Indian Reorganization Act of 1934 was followed by another destructive and inhumane policy, that of Termination and Relocation of 1953 to 1968.

It was not until the 1970s, within living memory, and as a direct result of American Indian activism, that a measure of justice began to be done. Policies implemented since include the Self Determination of Indian Tribes and the affirmation of a “government to government” or “Nation to Nation” relationship. This included the recognition in the US courts of the continued validity of the legally-binding Treaty rights of Indian Nations, including fishing and land rights, although full recognition and implementation remain unrealized.

But the development of this more equitable relationship has not produced true justice. It is no accident or statistical anomaly that Indians in the United States continue to be the least educated, the least employed, the most impoverished, the most imprisoned, the greater victims of violence and disease, the most discriminated and hidden underclass in the United States today.

The United States should continue pressing for a more just relationship with America’s first Peoples. As Ambassador Rice said at the 9th Session of the UN Permanent Forum on Indigenous Issues (2010), “America cannot be fully whole until its first inhabitants enjoy all the blessings of liberty, prosperity, and dignity.” We believe that the UN Declaration, recognized as a minimal standard for the survival of Indigenous Peoples, is a large step toward this laudable aspiration. It would be sadly ironic if the United States delayed full and unqualified support for the Declaration until its policies were fully and unequivocally consistent with all of its provisions. As a universal aspiration, the Declaration should serve the United States, as it does the rest of humanity, as a blueprint, a roadmap and a framework for developing policies that lead toward a just and equitable future instead of relying on the inadequacies of the present or a blatantly inequitable and oppressive past.

The Declaration’s preamble states the conviction of the international community, “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, respect for human rights, non-discrimination and good faith,” It is in this spirit that we submit these comments for the Committee’s consideration.

Attachment

Self-Determination and Treaties Concluded with Indigenous Peoples**The UN Declaration on the Rights of Indigenous Peoples: A Framework for Recognition and Redress**

It has been noted that many of the Declaration's most important provisions are already a part of US policy. Since the Nixon Administration the declared policy of the United States has been one of the Self-Determination of Indian Tribes, and a "government to government" relationship with Tribes. In their explanation of vote at the General Assembly in 2007, the US Delegation recognized as much:

"The U.S. government recognizes Indian tribes as political entities with inherent powers of self-government as first peoples. In our legal system, the federal government has a government-to-government relationship with Indian tribes. In this domestic context, this means promoting tribal self-government over a broad range of internal and local affairs, including determination of membership, culture, language, religion, education, information, social welfare, maintenance of community safety, family relations, Economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions."

In this regard, we affirm the core importance of the Declaration's Treaty provisions and relevant parts of its preamble and their importance to all Native Americans, and in particular for the United States. The hundreds of ratified Nation to Nation Treaties with Indigenous Nations are considered a Sacred, binding oath by the Indigenous Parties to the Treaties that were concluded between Indigenous Peoples and the United States. The UN Declaration in Article 37 calls upon States to honor and uphold Treaties, Treaty Rights and the Treaty relationship. As recognized in the preamble: "... treaties, agreements and other constructive arrangements and the relationship they represent are the basis for a strengthened partnership between indigenous peoples and States".

The United States in international fora, such as its Periodic Report to the CERD Committee has recognized its Treaties with Indian tribes as binding and enforceable:

"Although treaty making between the federal government and the Indian tribes ended in 1871, the treaties retain their full force and effect even today because they are the legal equivalent of treaties with foreign governments and have the force of federal law."¹

The Treaty provisions of the Declaration are thus also admittedly part and parcel of US policy toward Indigenous Peoples in the United States. The international character of the over 400 Nation to Nation Treaties it concluded with American Indian Nations and the Hawaiian Nation between 1778 and 1871 must be recognized and respected, in both policy and in fact.

But the truth is they are not. As an example, it is well settled case law that Treaties concluded with Indian Nations can be abrogated at will, with complete impunity by Congressional action

¹ UN Doc. CERD/C/USA/6, 1 May 2007, at Paragraph 335.

without due process. If Indian Nations cannot rely on the Treaties concluded with the United States and ratified by this august body, the US Senate, their decisions and self determination are ultimately illusory, overtaken by the unilateral decisions of others. The Nation to Nation relationship based on respect, recognition, equality and mutual consent which, the basis of the original and enduring Treaty relationship will continue to be undermined and made a nullity.

The Treaties entered into and ratified by the United States government with Indian Nations recognize and affirm a broad range of rights and relationships including mutual recognition of sovereignty, peace and friendship, land rights, right of transit, health, housing, education and subsistence rights (hunting, fishing and gathering) among others. Even though Congress may have ended US Treaty-making with Indian Nations in 1871, the preexisting Treaties are still in effect and contain obligations which are legally-binding upon the United States today. Treaties as "the Supreme Law of the Land" must certainly encompass the US' obligations described in those Treaties entered into in good faith with the original Indigenous Nations of this land.

The US Supreme Court has confirmed the lack of good faith by the US in addressing its Treaty obligations with Indian Nation Treaty Parties. As an example, in 1980, regarding violations of the 1868 Ft. Laramie Treaty with the "Great Sioux Nation" (Lakota, Dakota and Nakota), the Supreme Court affirmed a statement by the Court of Claims that "a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation".² However, despite this clear acknowledgement of wrongdoing and bad faith, the Treaty was unilaterally abrogated, and the land, including Pahá Sápa, the sacred Black Hills, central to Lakota culture even now, were taken. They are now in the hands of the United States, and, pursuant to a valid Treaty honorably concluded with the United States, could be returned to their rightful owners without substantially affecting the general scheme of things.

A just and fair process in the US to address, adjudicate and correct these and other Treaty violations with the full participation and agreement of *all* Treaty Parties, as presented in the UN Declaration, has never been established. Relevant provisions, in addition to Article 37, provide guidance to States and Indigenous Peoples for the establishment of such processes. They include:

"Article 40: "Indigenous peoples have the right to access to and prompt decision through a just and fair procedures for the resolution of conflicts and disputes with States ... [and] give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

"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 United States v. Sioux Nation, 207 Ct. Cl. 234 at 241, 518 F.2d 1298 at 1302 (1975), cited in United States v. Sioux Nation of Indians, 448 U.S. 371 at 388 (1980).

Article 28 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.

The failures of the unilateral processes established in the US in the past, including the now defunct Indian Claims Commission, is well recognized. The denial of due process with regard to the unilateral abrogation of Treaties concluded with Indian Nations in the US has been addressed by the CERD Committee, the Treaty Monitoring Body of the International Convention on the Elimination of all forms of Racial Discrimination. In its recommendations to the US in 2006 in response to a submission by the Western Shoshone National Council et al under the CERD's Early Warning and Urgent Action Procedure³, the CERD identified the process established by the US for addressing violations of Treaties with Indigenous Nations, the Indian Claims Commission established in 1946 and dissolved in 1978, as a denial of due process which did not comply with contemporary human rights norms, principles and standards. The CERD expressed concerns regarding the US assertion that the Western Shoshone lands had been rightfully and validly appropriated as a result of "gradual encroachment" and that the offer to provide monetary compensation to the Western Shoshone, although never accepted, constituted a final settlement of their claims.⁴

Establishing a fair, transparent and fully participatory process to ensure that the mutual obligations established under these Treaties are fully honored, upheld and respected is an essential aspect of the US' compliance with its obligations under international Treaties as well as the requirements of the Declaration. This can be a priority for consideration by this body of new legislative provisions and processes to be undertaken in light of the US support for the UN Declaration. It is our fervent hope, recommendation and request that the process currently being undertaken by the US Senate Committee on Indian Affairs will accept this historic opportunity to include due consideration of the ongoing need to establish such a process with the full and equal participation of both the Indian Nation and US Treaty Parties in accordance with international human rights norms and standards, taking into consideration the provisions of the UN Declaration as well as the recommendations of the UN Treaty Monitoring Bodies.⁵

³ CERD/C/USA/DEC/11 April 2006

⁴ "The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dam versus United States* (Case 11.140, 27 December 2002)". Ibid para 6.

⁵ In its 2006 examination of the United States under the International Covenant on Civil and Political Rights (ICCPR) the Human Rights Committee (HRC) noted its concern over the "extinguishment" of aboriginal title and violations of the right to decision making by Indigenous Peoples over activities affecting their traditional territories. The HRC recommended that the United States, "... should review its policy towards indigenous peoples as regards the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs and grant them the same degree of judicial protection that is available to the non-indigenous population. It should take

The Right of Free, Prior and Informed Consent

The Right to Free Prior and Informed Consent (FPIC) is a central underpinning of the UN Declaration and the right of Self-Determination, affirmed in a number of the Declaration's Articles as well as in a number of other international standards, including General Recommendation XXIII of the CERD.⁶ No doubt there are challenges in reconciling current US policies with the full implementation of FPIC, as contained in the UN Declaration and other international standards addressing this internationally-recognized right. But there is also a historic potential and opportunity for a greater, more just and equitable recognition of the rights of Indigenous Peoples in the United States consistent with the Declaration.

We note that while President Obama's "Consultation and Coordination with Tribal Governments" policy mandates, as stated by Ambassador Rice at the Permanent Forum last year, "that all agencies have an accountable process for meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications," the new policy falls short of consent, particularly Free, Prior and Informed Consent.

We doubt that there are any justifiable or outstanding objections to the concept of consultation, or that these consultations be prior to any action by the State, or that they be informed. With regard to "free" consent itself, there is implicit in this new policy toward Indian and Alaskan Tribal governments a recognition that there is a right to participate effectively in a process over matters that affect them. At the very least this current policy requires a good faith effort to achieve agreement.

We believe that the principles of democracy and democratic participation as well as the Treaty relationship would be strengthened by fully recognizing the right of consent when American Indian, Alaska and Hawaiian Tribal Nations would or could be affected by government or governmental actions, or by activities of third parties that are condoned or permitted by the government. Ambassador Rice's stated objective of the United States at the Permanent Forum, was of not being "satisfied" and to, "seek to continue to work together with our partners in indigenous communities to provide security, prosperity, equality, and opportunity for all." "Working together," "as partners," connotes equity, mutuality equality – and consent.

Without the requirement of consent there is an inherent contradiction in policy of the recognition by the United States of "...Indian tribes as political entities with inherent powers of self-government as first peoples." Without consent there is no certainty of self government, nor equity or equality in the "government to government" relationship. In the end, without free, prior and informed consent, there is only the undesired and many times destructive action, in many cases over a Tribe's strenuous objection. Without recognition and implementation of the right of

further steps in order to secure the rights of all indigenous peoples under articles 1 and 27 of the Covenant to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture." Human Rights Committee, Concluding Observations, United States of America, Eighty-seventh session, 10-28 July 2006, UN Doc. CCPR/C/USA/CO/3, 15 September 2006 Para. 37.

⁶ CERD General Recommendation XXIII (5) on Indigenous Peoples, Fifty-first session, 1997, Contained in document A/52/18, annex V.

Consent, through a formal, good faith process which includes but is not limited to exchanges of views and intentions through consultations, the potential for unwanted unilateral action is as real today as it was the day Columbus landed. Without consent there is only the taking.

Of particular concern is unwanted "development" on Indigenous lands threatening subsistence habitats, sacred sites and cultural practices, environmental integrity, water and health among other rights. *Article 32* of the Declaration that recognizes, again, a fundamental principle of the right of self determination, the right to determine and develop their own lands and their priorities for development:

"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."

The reasons for stated reservations concerning the right of Free, Prior and Informed Consent by the US are based entirely on unfounded fears of a "veto" power over development. But this development is, after all, on or affecting their own Lands. So-called "development" can and does impact, many times profoundly a Tribe's own lands and resources as well as the health and welfare of its members and other factors vital to the preservation of their culture and way of life.

US policy should be based on positive aspirations and not on imagined negativity. Aspirations need no reservations lest they become incomplete, imperfect goals, lest they become inadequate hopes. US Policy should be forward looking, implementing a vision of improved and respectful relations with all American Indian, Alaska and Hawaiian Native Peoples and Nations.

Conclusion

It is sometimes said that treaty violations and the loss of Indian lands are "historical wrongs" not now capable of redress. Yet this "history" continues to plague Indigenous Peoples, continues to eat away at their identities, cultures and ways of life. How recent do "historical wrongs" have to be in order that they be made right? For many Indigenous Nations, Peoples and individuals, these wrongs are as unjust and painful today as the day they were committed. And today, even now, many of these wrongs are factually capable of justice.

As the Declaration's preamble affirms, "*Recognition of the rights of Indigenous Peoples in this Declaration will enhance cooperative and harmonious relations between the State and Indigenous Peoples.*" We look forward to this end and this recognition by the United States of America of the inherent dignity and rights of Indigenous Peoples with the full implementation of the United Nations Declaration on the rights of Indigenous Peoples.

Recommendations

It should be noted that although the Plenary Powers Doctrine exists and is part of United States Constitutional law today, it is not constitutionally required. The Congress as well as the Executive can and have taken a much more humane and equitable approach and are capable of achieving greater equity and justice in spite of it. We therefor recommend:

1. That the Congress, in conjunction with Indigenous Peoples, establish a process that includes the full participation and agreement of the Indigenous Peoples concerned, with just and fair procedures for the resolution of all conflicts and disputes with the United States that give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and their international human rights, in accordance with the provisions of the UN Declaration.
2. That the Congress take steps to implement an equitable and just process or mechanism, with the full and effective participation and agreement of the Indigenous Nation Treaty Parties, to review implementation of the obligations and commitments contained in Treaties concluded with Indigenous Nations and to redress and resolve violations and unmet obligations in this regard. We further recommend that this US Senate Committee hold regular hearings, in consultation and with full participation of Indigenous treaty Nations, to review the progress of establishing this process.
3. That the Congress, by appropriate legislation require the Free, Prior and Informed Consent of the Indigenous Peoples concerned, 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.

PREPARED STATEMENT OF THE BLACK HILLS SIOUX NATION TREATY COUNCIL

Greetings from the traditional legal government of the Lakota Oyate that has governed the Lakota people since before the time of Europeans in our territory and the period of colonization. We govern with the support of our people. Our authority comes from the Creator who provided us with Original Instructions for living on the lands set aside for the Lakota Oyate.

Through our work on the *Declaration on the Rights of Indigneous Peoples* ("the Declaration"), this same authority is acknowledged under 21st century international law based our right to self-determination and with free, prior and informed consent as set forth in Articles 1, 2, 3 and 19 of the Declaration on the Rights of Indigenous peoples.

Further, as set forth in our submittal "*Resolution of the Black Hills Sioux Nation Treaty Council Rejection of the United States' Statement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*" ("Rejection of U.S. Statement"), of January 19, 2011, we reject and refuse to acknowledge any limits on our rights which utilize Federal Indian Law, including these Congressional Hearing by the Senate Committee on Indian Affairs. Federal Indian Law, its exercise, and its institutionalization are wholly discriminatory, racist and exercised with the intention to do harm to the Lakota people and our territory in violation of the Declaration and other international standards, laws, and treaties, including the Fort Laramie treaties of 1851 and 1868.

Indian Reorganization Act governments ("the IRA") were illegally installed on our territories utilizing force and deception and maintain their "authority" only at the will of the United States government, its money, weapons and citizenry that continue to permit human rights violations. On the Pine Ridge Territory of the Lakota Oyate no less than three "elections" were held and all of them defeated the IRA. Nonetheless, the IRA was forcibly installed. This is a violation of Articles 18 and 19 and makes any collaboration with or presentation by IRA government to the United States government a violation of our "*right to participate in decisionmaking in matters which would affect [our] rights, through representatives chosen by [us] in accordance with [our] own procedures, as well as to maintain and develop [our] own indigenous decisionmaking institutions.*" (Declaration Article 18)

IRA governemnts are, in fact, no different than any of the colonial governments imposed upon peoples around the world during Euro-American conquests of the

15th, 16th, 17th, 18th, 19th and 20th centuries. These governments do not comply with the right of self-determination or the right to free, prior and informed consent. Therefore, consultations, hearings, discussions or any other form of meaningless input, on a government-to-government basis, between the IRA governments of the United States and the Congress of the United States, are by definition violations of the contents of the Declaration. Further, the Lakota Nation has internationally recognized treaties with the United States. Congressional, government-to-government hearings, violate the nation-to-nation status of our relationship with the United States under the Fort Laramie Treaties of 1851 and 1868.

The Declaration is the minimum standard acceptable to the Lakota people who have worked at the United Nations on this issue since 1975. The current attempts of the United States to appear to “support” the Declaration are nothing more than the same pattern of “ripe and rank . . . dishonorable dealings” (U.S. Court of Claims) employed by the invented nation of the United States since its incorporation in the 18th century. The United States, frequently defeated in battle (at least by the Lakota, Cheyenne and Arapahoe alliance of nations), had to invent such fictions as “plenary power”, “dependent domestic nations”, the Dawes Act, the Citizenship Act, the Removal Act, the Indian Reorganization Act, and the Relocation Act, all to deny Indian people our rights under any standard of fair play, justice and international law. This latest deception, involving the Declaration, is nothing more than an attempt to domesticate the provisions of the Declaration within the meaning of U.S. domination, racism, colonialism and environmental degradation in order to steal resources.

Additional evidence is seen in the fact that at the same time that the United States engages in fraudulent Congressional Hearings, corporations are on our territory preparing to further contaminate our water and destroy our land with the poisons of uranium mining. If the United States were truly interested in any provisions of the Declaration this would not be occurring. Yet, it is not only happening on this very day, it is the policy of the same Administration that has stated its “support” for the Declaration. This is a violation of Articles 25, 26, 27, 28, 29 and 30 of the Declaration. Is the United States of America and its people capable of ever ending the lies and deceit? What possible motive can we, as Lakota people, see but human, environmental and cultural genocide?

Finally, we address our brothers and sisters who participate in this process with the United States. We urge us all to remember our history, to hear the voices of our ancestors who died during the American Holocaust, and to take a stand on behalf of the generations to come. Reject the lies and stand with your people.

JOINT PREPARED STATEMENT OF THE MÉTIS NATIONAL COUNCIL AND THE
INTERNATIONAL ORGANIZATION OF INDIGENOUS RESOURCE DEVELOPMENT

The Métis National Council (the MNC) and the International Organization of Indigenous Resource Development (IOIRD) welcome the opportunity to provide input into the United States Senate Committee on Indian Affairs' consideration of domestic policy implications of the *UN Declaration on the Rights of Indigenous Peoples* (the *UN Declaration*). This approach of working together to ensure that domestic policy is consistent with the *UN Declaration* is the type of partnership that is called for within the *UN Declaration* itself.

We congratulate the US government for taking the important step of endorsing the *UN Declaration*. This is a very positive development leading to global consensus on recognition of the rights of Indigenous peoples. It is excellent that the US Senate Committee on Indian Affairs is now considering how to best implement the *UN Declaration* through a review of domestic policy implications.

We offer the following recommendations for your consideration:

1. The US law and practice regarding Indigenous self-determination, as it pertains to US tribes, must be consistent with the *UN Declaration* as an international human rights norm.

Guided by pre-ambular paragraph 16 and articles 1, 3, and 4,¹ we assert that US law and practice is not currently consistent with customary international law which is codified in these provisions. The *Self-Determination Act* is a federal and domestic practice that does not recognize the applicability of international customary law. This contrasts with Treaties, which affirm the inherent right of self-determination of Indigenous peoples and are of international character. The *Self-Determination Act* must therefore be updated to reflect a Nation-to-Nation relationship and international law in this area. Treaties must be adequately reflected.

2. The US government must recognize the right of all Indigenous peoples to belong to a community or Nation and to determine their own identity as Indigenous peoples. Based on such recognition, there must be a change to the US Indian policy that does not currently allow for the recognition of a distinct Aboriginal people, the Métis.

The Métis traditional homeland is found in Manitoba, Saskatchewan and Alberta, extending into Ontario, British Columbia and the North West Territories in Canada and also extends into the States of Minnesota, North Dakota and Montana in the US.² The rights of Indigenous peoples to belong to a Nation and to identify as Indigenous peoples are set out in articles 9 and 33 of the UN *Declaration*.³

¹ **Pre-ambular Paragraph 16:** 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, as well as the Vienna Declaration and Programme of Action 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,

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 Rights and international human rights law.

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.

² For further details, please see correspondence between President Charlier and President Obama dated February 16, 2009 (enclosed herein).

³ **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 33. 1: Indigenous peoples have the right to determine their own identity or membership in

Currently, under the US government's Indian policy, Métis people(s) must seek enrollment as individual members of an Indian tribe/nation or collectively seek federal recognition as an Indian tribe or nation. This policy denies the right of the Métis to be recognized as Indigenous peoples.

3. Free, prior and informed consent, as defined in the UN *Declaration* must be respected by US policy.

The right of "free, prior and informed consent" in the UN *Declaration* is the affirmation of the Treaty principle of "mutual consent." As outlined in pre-ambular paragraph 15,⁴ "free, prior and informed consent" is the basis for strengthened partnerships. Article 19 and 38⁵ together call for joint drafting or considering Indigenous initiatives, prior to taking legislative or administrative action. This is consistent with the outcomes of 3 UN Expert Group meetings on the meaning of free, prior and informed consent. This approach must be reflected in the US's domestic policies.

4. The US must respect and honour Treaties according to their original spirit and intent, consistent with the UN *Declaration*. This approach provides a positive solution for both the US and Indigenous peoples.

In many areas of the US, Treaties exist and form the framework of partnership and good relations, representing our solution to many issues if honoured and respected according to their original spirit and intent. US courts have established some Treaty principles, which, again, if honoured, are solutions.

President Obama during his speech at the Crow Tribe stated that, "My Indian policy starts with honouring the unique government-to-government relationship between tribes and the federal government and ensuring that our treaty obligations

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.

⁴ Pre-ambular Paragraph 15: Considering also that treaties, agreements and other constructive arrangements, and the relationship that they represent, are the basis for a strengthened partnership between indigenous peoples and States

⁵ 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 38: States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

are met, and ensuring that Native Americans have a voice in the White House. I'll appoint an American Indian policy advisor to my senior White House staff to work with tribes...So let me be clear. I believe that treaty commitments are paramount law."⁶ This is the context under which a discussion about the UN *Declaration* must occur and is the basis for our response in this submission.

5. The US government, in conjunction with Indigenous peoples concerned, should institute an independent conflict resolution mechanism as outlined in articles 27, 28 and 40 of the UN *Declaration*.

Specifically, we propose that an independent conflict resolution mechanism be developed, as outlined in articles 27, 28 and 40.⁷ Such a possible mechanism was also recommended in the UN Treaty Study. The UN *Declaration* provides a framework for redress, restitution and conflict resolution processes that are fair, independent, impartial, open, transparent and established and implemented in conjunction with Indigenous peoples concerned, in accordance with article 27. Also, the UN *Declaration* gives due recognition to Indigenous peoples' laws, traditions, customs, legal and land tenure systems and international human rights (articles 27 and 40). It provides redress and restitution for Indigenous peoples' traditional lands, territories and resources which were confiscated, taken, occupied, used or damaged without their free, prior and informed consent (articles 27 and 28). It also provides just, fair and equitable compensation – that is, where the return of original lands is not possible, compensation shall take the form of lands, territories and resources equal in quality, size and legal status (article 28). These

⁶ Barack Black Eagle Obama, Speech on the occasion of his visit to the Crow Tribe in Montana (19 May 2008): [videos.billingsgazette.com/p/v/video?id=1888836](https://www.billingsgazette.com/p/v/video?id=1888836).

⁷ 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 40: Indigenous peoples have the right to access to and prompt decisions 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 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.

articles set out the measures that the US should take in order to act consistently with the lands, territories, natural resources, sacred sites, and redress provisions of the UN *Declaration*. The development of an independent conflict resolution mechanism could serve this purpose.

In this regard, we support the submission on sacred sites made by the Navajo Nation.

6. In conclusion, we encourage the Senate Committee on Indian Affairs to make President Obama's promise a reality by reviewing all US policies and laws to ensure they comply with the UN *Declaration's* minimum standards. The question is not whether the UN *Declaration* complies with federal law and policy but whether US domestic laws and policies meet the minimum standards contained within the UN *Declaration*. We offer our support in the Committee's efforts in this important challenge.

Attachment

February 16, 2009

President Barack Obama
United States of America

Dear Mr. President:

Congratulations on your successful campaign in achieving the highest political office in your country. I am the President of the Métis National Council, the governmental representative of the Métis Nation within Canada. My people, the Métis, emerged as a new and distinct Aboriginal people in what was known as the northwest of British North America. Our traditional homeland is now bounded by, and found within, the three prairie provinces (Manitoba, Saskatchewan and Alberta), and extends into Ontario, British Columbia and the North West Territories within Canada. Our traditional homeland also extends into the States of Minnesota, North Dakota and Montana in the United States of America.

Originally of mixed European and Indian ancestry, we evolved through a process of ethnogenesis and the unique roles we played in the fur trade and related commerce, into a distinct people, separate and apart from the existing Indian nations and tribes. After several generations we developed a collective identity as a new nation of Aboriginal people, then commonly called Halfbreeds, but eventually accepted as the Métis Nation.

We have a language (Michif), a group identity, kinship connections throughout our homeland, and cultural characteristics defined by our music, clothing, dance, flag, symbols and way of life. We were, and continue to be, known as "the people who own themselves": "Otipimisiwak". The same characteristics apply to our brethren in the U.S. whose Métis communities happened to find themselves south of the 49th parallel when the international boundary was drawn.

In Canada, our struggle for survival has been a long and arduous one, facing obstacles from both the Indian Nations and the White community. Our history is a sad one, including dispossession from our lands and in the late 1800s, facing the military might of the Canadian/British troops. Of note, regrettably, during our Northwest Resistance of 1885, the gatling gun was loaned by the United States government to the government of Canada and used against us, the first time this weapon was field-tested on human beings.

I say all of this by way of a quick introduction to our people. Regardless of those dark days, we have continued to make progress with the government of Canada, although federal policy by and large still primarily excludes us from the programs, services and rights resolution mechanisms provided to the other Aboriginal peoples, the First Nations (Indians) and Inuit.

Our long and hard fought struggle for the recognition of our existence as an Aboriginal people and nation resulted in our inclusion in the Aboriginal rights clause of Canada's Constitution in 1982. There-in the Aboriginal peoples of Canada are defined as "including the Indians, Inuit and Métis peoples of Canada". While our rights are still denied us, we at least can rest assured that our existence as a people is finally acknowledged and protected in law.

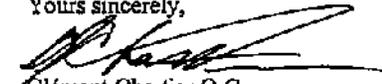
What I would like to bring to your attention is the denial of even that for those citizens of our Nation who reside in the United States of America. Your government's Indian policy does not allow for the recognition of a distinct Aboriginal people, the Métis. In your country, our people have to seek enrollment as individual members of an Indian tribe/nation or collectively seek federal recognition as an Indian tribe or nation.

It is my firm belief that an enlightened administration, based on your leadership, should be able to address this decades old denial of Métis identity and existence. It should be a freedom of choice of the Métis citizens in your country to decide where they wish to fit in. Some who are recognized as Indians and members of tribes may opt to remain so but others, as well as many who are not recognized and enrolled, may wish to have their collective identity as Métis recognized and accommodated.

We Métis in Canada also have a problem with US/Canada border crossing freedom. Under the Jay Treaty, your government recognizes the border crossing rights of Indian peoples and for my people, the Métis, we are forced to write letters for our citizens who wish to reside in the United States under benefit of the Jay Treaty. In our letters we are forced to say that the bearer of the letter is a person who possesses over 50% Indian blood. This is contrary to our view of ourselves. We are Métis, a full fledged rights bearing Aboriginal peoples recognized in Canada's Constitution and not part Indians. Most of our leaders have stopped providing such letters because it violates our own principles and our right to be accepted for who we are; we should not be required to say who we are not to exercise a right and benefit that should extend to us in any event.

I am of the firm belief that you can personally relate to our situation and place great hope that you can assist us in addressing these matters which have for far too long cried out for justice. In this connection, I propose that we meet so I can explain more fully our situation and hopefully convince you of the justice of our cause and thereby jointly pursue a long awaited resolution to this injustice.

Yours sincerely,



Clément Chartier Q.C.
President

c.c.: Ms. H. Clinton, Secretary of State

PREPARED STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, U.S. REPRESENTATIVE
FROM AMERICAN SAMOA

Chairman Akaka, Vice Chairman Barrasso, and the honorable members of the Senate Committee on Indian Affairs, I thank you for this opportunity to provide a written statement on the United Nations Declaration on the Rights of Indigenous Peoples ("Declaration"), a special recognition of the rights of some 350 million indigenous peoples throughout the world.

I commend President Obama on taking the important first step of supporting the Declaration. Additionally, I want to recognize the tireless work of indigenous leaders from the United States and around the world who participated in the drafting of the Declaration from 1976 until it was adopted by the United Nations in 2007. The Declaration is a landmark collaborative document that brings attention to the plight of indigenous peoples in the United States and throughout the world.

Indigenous people have historically and to this day been the most marginalized group within a society. In addition to suffering the highest poverty rates within countries, Indigenous peoples lack representation within the countries that they reside decision making bodies in order to advocate for themselves.

Eleanor Roosevelt was a delegate to the United Nations, chairperson of the eighteen-nation U.N. Commission on Human Rights, and played a key role in drafting the Universal Declaration of Human Rights. The Universal Declaration of Human Rights sets forth in clear

and simple terms the basic rights of every individual and all peoples and is the bedrock of international human rights law. Just as the United States took the lead in the global push for Universal Human Rights, the United States can once again be a leader in promoting Indigenous people's rights. With over 200 years of experience in dealing with indigenous peoples the United States is uniquely situated to provide guidance to other countries on best practices in dealing with native peoples.

The US has come a long way from its initial policy towards Native Americans. Laws passed by Congress and judicial decisions have not always respected the human rights of Native Americans. For example, following the Revolutionary War in 1781, the United States referred to Indians on the East Coast as the "Indian Problem". The solution to the "Indian Problem" was the forced removal of all Native American nations from the East to West. In 1830, Congress passed the Indian Removal Act that authorized the use of military force, if necessary, to compel the relocation of all Native Americans located east of the Mississippi River to the West. The Cherokee Nation's removal from its land is remembered as the "Trail of Many Tears", because the journey from Georgia to Oklahoma resulted in the death of 4000 Cherokee members. There is still much work to be done to ensure the human rights of Native Americans, Alaskan Natives, and Native Hawaiians are respected. Two aspects of domestic policy that can be implemented following the principles in the Declaration are the current Native American Federal recognition process for Indian Tribes and Self-Determination of Indian Tribes.

Federal recognition is essential to allow Indian tribes access to federal resources that will allow them to preserve their culture, language and improve the condition of their people. Today, Mr. Chairman, the current process to recognize Indian Tribes is cumbersome and riddled

with problems. The current process is expensive, costing some tribes well over \$500,000, and most tribes seeking recognition just do not have this kind of money to spend. I need not remind the members of this committee of the fact that Native American Indians today have the worst statistics in the nation when it comes to education, economic activity, and social development. Additionally, the requirements for recognition require written documentation and often tribes lost any written documentation during their forced removal from their ancestral homelands. The high standard that the federal government sets for federal recognition of an Indian Tribe leaves many legitimate tribes unable to obtain recognition.

For several years now I have introduced legislation to better streamline the recognition process. In the 111th Congress I introduced H.R. 3690 that proposed to abolish the broken administrative process and replace it with an independent commission consisting of seven commissioners to be appointed by the President, with the advice and consent of the Senate. The commissioners would be authorized to promulgate regulations governing their operations, hire staff, and conduct proceedings as required by the bill to process petitions for federal recognition. Additionally, H.R. 3690 would have consolidated the seven mandatory criteria currently in the regulations into two criteria. These two criteria contain all the substantive criteria of the existing regulations 1) proof of descent from an historic tribe; and 2) proof of a community (including proof of political authority.) These criteria are consistent with the regulations and consistent with Supreme Court case law that defines an Indian tribe. For proof of the two criteria, H.R. 3690 adds methods that are objective and can be measured to minimize the subjective evaluation of tribes currently required in regulations. Mr. Chairman, I look forward to working with you to build upon my previous legislation to reform the federal recognition process.

The federal courts have also noted the unfair treatment of Indian groups because of the current federal acknowledgment process. In 1996, in the case of Greene v. Babbitt, 943 F. Supp. 1278 (W. Dist. Wash), the district court found that the current procedures for recognition were “marred by both lengthy delays and a pattern of serious procedural due process violations. The decision to recognize the Samish tribe took over twenty-five years, and the Department has twice disregarded the procedures mandated by the Constitution, and this Court.”

Sadly, the experience of the Samish tribe is not an isolated case. Although there are currently 565 recognized Indian tribes, there are many more tribes seeking federal recognition. Currently, over 60 tribes have obtained state recognition, but are still unable to obtain federal recognition.

The Declaration provides principles that the United States can use to prompt a change in its federal recognition process. Article 27 of the Declaration provides “States shall establish and implement...a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure system...” The key word of Article 27 is “fair.” The current process of federal recognition remains unfair to tribes because of the prohibitive cost, length of time it takes to get recognized, and the documentary requirements of Federal recognition.

The Declaration, besides encouraging changes to the federal recognition process also encourages the United States to allow indigenous peoples within the United States true Self-Determination. Currently the idea of “Self-Determination” remains illusory to Native Americans, Alaskan Natives, and Native Hawaiians. While the term has been used in previous legislation like the Indian Self-Determination and Education and Assistance Act of 1975, the

meaning is not the same as in international law. In International Law, self-determination means the acknowledgement of the right of native people to determine for themselves the nature of their internal policies and external relations. The Indian Self-Determination and Assistance Act of 1975 merely offered a hiring preference to American Indians in implementing federal policies, rather than true self-determination.

Although, numerous treaties provide Indians with some level of self-determination, Congress retains plenary authority to legislate over Indian tribes. The plenary authority over Indians includes the power to unilaterally break treaties with Indian nations. Under the current regime of illusory self-determination Indian tribes are free to determine their own fate only to the extent that the United States government permits it.

Mineral Leases on Native American land provides an example of the limits of Native American Self-Determination. Although the purpose of the Indian Mineral Act of 1938 is to maximize tribal revenues on reservations lands, the actual outcome is vastly different. For example, in one of the largest Indian uranium lease cases in history, "The Bureau of Indian Affairs ("BLA") and Interior Department generally seem to have been more concerned during the leasing process with their relationship with the company seeking leases than their relationship with Indian owners." McClanahan, 14 Indian L. Rptr. At 3117.

It is important to note that the Declaration specifically provides that while Indian Tribes are entitled to Self-Determination, they still must respect the territorial integrity of the country they are in. The Self-Determination emphasized in the Declaration is not one of breaking free from the country to form an independent state, but rather the self-determination necessary to decide education policy, law enforcement policy, and other important aspects of self-governance.

The Federal Courts have historically been a main barrier to Indian Self-Determination.

An example of the Supreme Court's view towards Indians is provided in the case of Montoya v. United States, 180 U.S. 261, 265 (1901):

"owing to the natural infirmities of the Indian character, their fiery tempers, impatience of restraint, their mutual animosities, their nomadic habits, and lack of mental training, they have as a rule shown a total want of that cohesive force necessary to the making up of a nation in the ordinary sense of the world...In short, the word 'nation' as applied to the uncivilized Indians is so much of a misnomer as to be little more than a compliment."

Federal Court rulings following Montoya, have provided the Secretary of Interior great deference in matters involving Indians since Indians were considered by the Federal Courts to be unfit to self-govern themselves.

Acts by Congress have also served as an additional barrier to true Self-Determination for Native Americans. The Indian Reorganization Act of 1934 ("I.R.A."), which permitted Indian tribes to adopt a constitution, but approval by the Secretary of Interior was required for any significant tribal decision. Kerr-McGee Corp. v. Navajo Tribe of Indians, 471 U.S. 195, 198 (1985). Almost the entirety of Title 25 is dedicated to supervision by the federal government over Indian affairs. Title 25 governs contracts between Indian tribes and non-Indians, lease of Indian lands for public, religious, educational, recreational, residential, business and other purposes and a host of other contracts that Indians may enter into with the State and private entities. At first glance it appeared the I.R.A. provided Indian tribes with the right of self-determination by providing them the right to adopt their own constitution, ultimately the United States through the Secretary of the Interior remained the puppet master controlling the fate of Native tribes.

Article 3 of the Declaration provides "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." Following Article 3 of the Declaration Native Americans will be able to pursue leases with non-Indians as well as other economic activities without the prior approval of the Secretary of Interior.

A key component of self-determination is having "Free, Prior and Informed Consent" prior to any changes are made regarding the resources on Indian Land. The Declaration provides for a requirement of "Free, Prior and Informed Consent" that recognizes indigenous' peoples inherent rights to land and resources. Without the ability to have "Free, Prior and Informed Consent" Native Americans will be vulnerable to the federal government using Indian lands for toxic waste storage, or for other uses that exploit the natural resources of the land without the tribes consent.

In closing, I thank again Chairman Akaka, Vice Chairman Barrasso, and the honorable members of the Senate Committee on Indian Affairs for this opportunity. I commend you for taking on this important issue and my hope is we can work together in the future to continue to enhance the rights of indigenous peoples in America.

PREPARED STATEMENT OF D'SHANE BARNETT, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF URBAN INDIAN HEALTH

On behalf of the National Council of Urban Indian Health (NCUIH), its 36 member organizations and the 330,000¹ patients living in the urban communities our programs serve annually, I would like to thank the Senate Committee on Indian Affairs for the opportunity to provide testimony addressing the domestic policy implications of the United States' endorsement of the United National Declaration on the Rights of Indigenous Peoples (UNDRIP). This Declaration provides opportunity for American Indian and Alaska Native (AI/AN) communities to speak in favor of an increased commitment to quality, culturally competent health care.

Since 2007, NCUIH has partaken in the United Nations Permanent Forum for Indigenous Issues (UNPFII); and has both fostered the inclusion of the Urban Native American perspective in the Forum's discussions and documents; as well as requested the permanent presence of the US Department of State in the UNPFII annual sessions⁴. NCUIH is, thus, pleased and applauds the Obama Administration's decision to endorse the Declaration. Likewise, we look forward to exploring ways that the UNDRIP can be utilized to increase the Government's commitment to eliminating health disparities, and to bring international attention to the rights and obligations owed to AI/AN people.

The UNDRIP provides the international legal basis for indigenous peoples to appeal to international organizations in case their rights are trespassed or violated. Additionally, it creates opportunities to build bridges and coordinate strategies where communities in different countries find common cause.

A number of UNDRIP articles enshrine rights and provide protections in regards to the provision of health care. For example:

- Article 21 states that indigenous peoples “*have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of...health.*”
- Article 23 states that indigenous peoples “*have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and...to administer such programs through their own institutions.*”
- Article 24 provides that 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. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health.*”
- Article 29 states that national governments shall “*take effective measures to ensure...that programs for monitoring, maintaining and restoring the health of indigenous peoples...are duly implemented.*”

As the national representative of the health care needs of the urban Indian population, NCUIH is very interested in exploring opportunities to translate the commitments and aspirations expressed in the Declaration into improved policies and implementing programs pertaining to the health care of AI/AN living off-reservation. The overarching goals and commitments endorsed by the United States in the Declaration have a long basis of support in domestic law – albeit far too often the government has failed to live up to these promises⁸.

Congress has consistently acknowledged that the federal government’s trust responsibility extends to AI/AN people living in urban settings. From the original Snyder Act of 1921 to the Indian Health Care Improvement Act (IHCA), Congress has consistently found that:

“The responsibility for the provision of health care, arising from treaties and laws that recognize this responsibility as an exchange for the cession of millions of acres of Indian land does not end at the borders of an Indian reservation. Rather, government relocation policies which designated certain urban areas as relocation centers for Indians, have in many instances forced Indian people who did not [want] to leave their reservations to

*relocate in urban areas, and the responsibility for the provision of health care services follows them there.*¹

Furthermore, the IHCA, which was permanently authorized as part of the Patient Protection and Affordable Care Act of 2010, declares it the policy of the United States to elevate the health status of the AI/AN people to a level at parity with the general U.S. population. These statements of federal law and policy are directly reflected in the health-specific provisions of the UNDRIP. It is NCUIH's goal to bring attention to the commitments expressed in US federal policy to improve the health of American Indians and Alaska Natives living in urban areas, and to leverage the United States endorsement of the UNDRIP to bring about a more immediate and substantial realization of these commitments.

Given the generous opportunity that the SCIA has provided us with by requesting for our expert input and comments; following up on the discussion on the strength and effectiveness of the US Indian Law Framework at the *Oversight Hearing on the Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples* taking place on June 9th, 2011; and in the spirit of contributing to the greater good of our siblings in reservation-based and urban communities, we would like to bring your honorable attention to the following statements:

- o NCUIH acknowledges and agrees that the current US Indian Law Framework constitutes a solid base and sturdy foundation for positive collaboration between The US Government and Indian Nations to interact. Equally, it is most certainly true that this legal foundation is one of the better Indigenous legal frameworks in the world.
- o We believe there is, however, room for legislative improvement, refinement and customization of policies and tailoring of initiatives and programs impacting on and devoted to serving our peoples across the Nation.
- o Likewise, as strong and advanced the current US Indian Law framework is, we certainly believe there are legislative and policy lessons and experiences that the

¹ Senate Report 100-503, Indian Health Care Amendments of 1987, Sept 14, 1988, p25. Emphasis added

we can learn from other countries and their Indigenous communities. Please allow me to provide you with a concrete example:

- o According to recent studies, the New Zealander Indigenous (Maori) Health system and policies stemming from their 2000 Health Care Reform^N have allowed for Maori clinics and programs to incorporate traditional healing and holistic traditional practices (mind, body and spirit) into their mainstream system. Furthermore, the concept of Maori health models and wellbeing (including traditional healing) as practices to be used by Maori and encouraged to be learned by non-Maori providers
- o The latter seems to comply in a much better fashion with the articles 21, 23 24 and 29 of the UNDRIP. The latter, we believe, is remarkable not only in legislative terms, but also in financial terms if we consider the Indigenous peoples percentage and geographical extension ratios between the US and New Zealand**².
- o Traditional Healing and Traditional Health techniques have been part of our Member programs for generations and thus our urban and reservation based siblings could truly benefit from a better and more inclusive policy framework in this regard.

NCUIH, thus, encourages SCIA and the present invested stakeholders to explore the possibilities of looking into the New Zealander Maori Health System and any other Indigenous System that provides solutions that can be applied and customized in the spirit of betterment of all AI/AN' situation.

It is important to note that the endorsement of the UNDRIP has taken place in a very timely fashion, since the Implementation health programs stemming from the Affordable Care Act passage and the reauthorization of the IHCA have just been launched. In this regard, and furthering our previous argument related to traditional and culturally relevant health practices;

² **New Zealand Maoris are 15 % of the NZ population while the American Indian population is less than 2 %. Geographically the US is 32 times larger than New Zealand. <https://www.cia.gov/library/publications/the-world-factbook/geos/nz.html>

We would also like to bring your attention to another specific case in which articles 21 and 24 of the UNDRIP could be used as tool to improve policies and initiatives in our programs:

- o Based on information and feedback collected through both our work with federal agencies and our collaboration with our member clinics across the country, there is a need for a systematic, customized and tailored approach to the issue of Native-Two Spirit (N2-S) peoples.
- o N2-S refers to Native American who possesses the sacred gifts of the female-male spirit, which exist in harmony with those of female and male. Traditionally, a person who is two-spirit was believed to bridge both the social categories of male and female and the spirit and human worlds⁹. However in current times discrimination and stigma have shielded away N2-S from both participating in the community and from getting adequate health care and education.
- o Albeit the term N 2-S is not universally accepted among Native American communities and nations; some also use terms from their own nations, it indeed exemplifies and provides us with a very culturally-specific issue that many of our programs have expressed and increased concern on both how to treat and outreach to these members of their communities and the lack of resources and customized initiatives to approach this issue in an efficient and results-yielding fashion.
- o NCUIH's Center for Technical Assistance and Research has been working with the Substance Abuse and Mental Health Services Administration's Lesbian, Gay, Bi-Sexual, Transgender, Queer and Native 2Spirit Initiative; and acknowledges that the first steps towards awareness are being taken, but also that we are far from having laid the ground to produce a meaningful resource to help and educate health practitioners serving our people from effectively assist our Two Spirit siblings to participate and achieve fully healthy non-discriminated lives.

As closing remarks, I would like to reiterate and summarize our recommendations for SCIA to kindly consider when conducting further hearings or discussions on *the Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples*:

NCUIH believes that the UNDRIP as well as the recent launching of the Implementing initiatives stemming from the ACA, provide a timely momentum for all Indian peoples and Indian-related organizations and institutions to review our current legislative and policy framework and ensure that our services delivery system is in line with reality and our needs. Two specific issues that NCUIH brings up for discussion and attention are: a) In line with articles 21, 23, 24 and 29, of UNDRIP-- explore the possibility of conducting research and/ or a quick assessment on comparative effectiveness of US and foreign Indigenous legislation and policy frameworks. B) in line with articles 21 and 24 of UNDRIP—refine and customize the current programs and initiatives that would cover and serve the needs of our Two-Spirit peoples across the US. The afore mentioned, we believe, could not only open our eyes to innovative approaches on Indigenous improvement approaches, but it will certainly help ensure that the US Indian Law framework is indeed at the forefront of the Human rights trends in the world.

Thank You and Regards,

D'Shane Barnett,
Executive Director

¹ I.H.S./CDC. <http://www.doe.stae.gov/docs/48683132/Public-Health-Assessment-in-Indian-Country-A-National-Perspective.html>
http://www.ncuih.org/indigenous_rights_review

² On the one hand, the US Commission on Civil rights finds that "any attempt to fully fund urban Indian health care would require extensive structural change and a gradual increase in funding" (Broken Promises.2004. p.105); on the other hand, the Urban Indian Health Commission (UIH-RWJF) reports that "Millions of American Indians and Alaska Natives living in or near cities throughout the United States are seemingly invisible to health care providers and federal and state policy-makers..." (Invisible Tribes..., 2007) p.1. The specific citations for these two publications are: 1.-ibid-US Commission on Civil Rights. "Broken Promises. 2004; and 2. Urban Indian Health Commission/ Robert Wood Johnson Foundation. Invisible Tribes: Urban Indians and their Health in a Changing World. Urban Indian Health Institute. 2007.

³ The New Zealand Public Health and Disability Act (2000) went further into the concept of collaboration by including the development of specific Maori National Health Strategy (*He Karawa Ora*). The strategy is framed under the principles of "Partnership, Participation and Protection"—which also allow for Maori organizations and leadership to be involved in decision-making and planning, but also incorporated the concept of Maori health models and wellbeing (including traditional healing) as practices to be used by Maori and encouraged to be learned by non-Maori providers. Abel, Sally; Gibson, Dinna; Aruaki, Kai; Ehan, Terry; Leach, David Tipene Implementing the primary health care strategy: a Maori health provider perspective.(Research Papers) Social Policy Journal of New Zealand. July 01, 2005

⁴ Homelessness Resource Center /DHHS: Learning From The Field: Expert Panel On Youth Who Are LgbtQ2-S And Homeless. Summary of Proceedings. Part 1. Page 8

PREPARED STATEMENT OF JEFFREY A. CRAWFORD, ATTORNEY GENERAL, FOREST COUNTY POTAWATOMI COMMUNITY

The Forest County Potawatomi Community (FCPC) wishes to thank the Committee for the opportunity to present testimony on the domestic policy implications of the United Nations Declaration on the Rights of Indigenous Peoples (hereafter the Declaration). We also thank Chairman Akaka for his call to us and all those who care about these issues to consider what specific legislation is needed so that the United States can truly support the Declaration. We believe that although the adoption of the Declaration was an important step forward, of equal importance is what steps we take next.

As we noted in our comments to Ambassador Rice on July 15, 2010 and October 29, 2010, the Declaration is fundamentally consistent with the law and policy of the United States. See letters of July 15, 2010 and October 29, 2010 from Douglas Endreson to Ambassador Susan E. Rice (expressing the commenting Tribes' support for the U.S. endorsement of the Declaration). The law and policy of the United States are characterized by two fundamental tenets: the government-to-government relationship between the United States and tribes and the policy of self-determination. This framework underscores the importance of our ability to make decisions for ourselves.

Sadly and all too often the United States has fallen short of its duties and obligations to Indian tribes. But it is not our purpose here to focus on the past. Instead, the Declaration sets the standard for what our nations' relationship can and should be. The adoption signifies a new step in the shared story of our nations. We look forward to working together with the United States to realize the future envisioned by the United States' legal framework and the Declaration.

FCPC is a federally recognized tribe with a government-to-government relationship with the United States. We are organized under the Indian Reorganization Act of 1934 and exercise governmental authority under a Constitution originally adopted in 1937. We have a membership of more than 1,200 people to whom we provide services in numerous areas that include natural resources, environmental protection, education, health services, cultural resources, and emergency management.

While working to support our people culturally, socially, and economically, we often encounter barriers from other government organizations. The Declaration offers a framework for identifying those barriers and creating new pathways to enable tribal governments to function more efficiently. We have identified a few such areas that are of particular concern to us, but these examples are not exhaustive. We look forward to working with Congress to improve our ability to serve our people in all the domains of our Tribal government.

1. Environmental Policy: Resource Management

Our land base includes a Reservation of over 12,000 acres located in northern Wisconsin and trust lands in Milwaukee, Wisconsin. The Nicolet National Forest, which encompasses 661,000 acres and includes many water sources, including springs and lakes, largely surrounds our Reservation. Further, the Headwaters National Wilderness Area is within ten miles of the Reservation, while a State Wildlife management area adjacent to the eastern portion of the Reservation contains spring ponds, secluded lakes, and many historically and culturally significant properties.

We are very committed to the conservation and development of our common resources in order to promote the welfare of our members and our descendants. We believe that the health and integrity of the land and all its components cannot be separated from the health and continued existence of the Potawatomi people. In order to ensure the continued health of our land, our Natural Resources department is aggressively involved in the stewardship of our natural resources. Among our other efforts, we have taken on the regulation of our air and water resources.

The current policy of the United States recognizes our rights to control such domains as tribal governments. For instance, the Clean Air Act and the Clean Water Act make provisions for tribes to take over monitoring duties, should they so choose. Further, President Obama recently recommitted his Administration to the goal of involving tribes in policy and regulatory decisions when he reinvigorated Executive Order 13175 Consultation and Coordination with Indian Tribal Governments. 65 FR 67249, November 9, 2000. This Executive Order, recognizing the unique government to government relationship between the United States and tribes and the sovereign powers exercised by tribes over their land and members, requires the Federal Government to "encourage Indian tribes to develop their own policies;" "where possible, defer to Indian tribes to establish standards;" and "in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogative and authority of Indian tribes." *Id.* Sec. 3 (c)(1-3). The Declaration ensures similar rights, recognizing that tribes "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." Declaration, art. 26.

Although United States' policy and the Declaration both strongly support a tribe's ability to manage its own resources, there are still barriers to our ability to truly take control of our own land. For instance, our Tribe recently went through the process of designating our Reservation as a Clean Air Act Class I area. We felt strongly that this was necessary to protect our land and resources which form the basis of not only the health of our territory but also the health of our peoples. Although we were eventually able to succeed in designating the areas as Class I, it took us 13 years from start to finish to achieve the Class I status. Such a time delay demonstrates that we have not yet achieved full control over our natural resources. In order to truly live up to the standards of the Declaration, the United States must work to remove the barriers that continue to stand in the way of true self-determination.

2. Environmental Policy: International Cooperation

As evidenced by many international agreements and compacts, the environment and its concerns do not respect international borders. Although we have exercised our regulatory authority over the land and resources within our borders, we cannot truly address the needs of our people for healthy ecosystems and environments without working closely with the international community at our borders.

Much of the current legal framework recognizes our place at the table: as already mentioned, many environmental statutes make provisions for tribal stewardship of our resources. The Declaration supports these efforts by providing that 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 people for such conservation and protection, without discrimination.” Declaration, art. 29.

In order to meet the calls of both United States statutes and the Declaration, we must participate with our international neighbors in addressing the conservation of our resources. In order to do so, the United States must secure access for a tribal presence in any discussion or negotiation on these issues and recognize tribal governments’ indispensable part in the process. This entails recognizing our international ties and relations and allowing us free movement across borders. It also means a strong effort on the part of the United States to both always be cognizant of the needs of tribes when they negotiate on these issues and perhaps more importantly, ensuring a seat for tribes at any such negotiation.

We depend on our natural resources for the economic, cultural, and spiritual health of our Tribe. We have much to offer in the pursuit of our common goal of protecting the health of our land. But in order to do so, in order to meet the needs of our people, and in order to be able to fully exercise our rights under the governing statutes and the Declaration, the United States must recognize our place at the table. Only together can we achieve success.

3. Land Leasing Capabilities

As all nations know, communities cannot flourish without strong economies. The economic health of our peoples is, thus, of paramount importance to us and we are proud of the steps we have taken thus far to build a strong economy. We are committed to ensuring its continued vitality, but in order to do so we must be free to seize economic opportunities.

The United States has recognized the importance of tribal economic self-determination. Starting with the Indian Self-Determination and Educational Assistance Act, the United States policy has been to encourage economic development and self-sufficiency, including the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*, and the Native American Business Development, Trade Promotion and Tourism Act, 25 U.S.C. §§ 4301 *et seq.*

The Declaration also recognizes the importance of economic stability, providing indigenous peoples the right to “maintain and develop their . . . economic . . . 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.” Declaration, art. 20. But as the Declaration also recognizes, the ability to exercise such rights is not ensured simply through recognition of the right. *See* arts. 38, 39. Instead there must be assurance that barriers preventing the exercise of such rights will be addressed by States. Thus, the Declaration provides that indigenous peoples must “have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.” *Id.* art. 39.

One such barrier to economic self-determination is addressed in a bill that was recently introduced, the Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act) of 2011, which would expand our ability to lease tribally-owned land, especially for the development of economic opportunities. The bill would help accelerate leasing opportunities with economic partners and will eliminate the risk of losing opportunities due to the lengthy approval process currently in place. By doing so, it will help fuel our economy. We are strong supporters of the HEARTH Act and thank Vice Chairperson Barrasso for his work on such an important issue. We urge all the members of the Committee and Congress to work together to ensure this legislation achieves its goals.

In order to build a strong economy, we must have the cooperation of the United States. Tribes must have the right to freely negotiate with economic partners and we cannot be constrained by requirements that limit our ability to enter into contracts or require that we receive approval from the Bureau of Indian Affairs before proceeding forward.

As history has taught us, tribes do better when we make decisions for ourselves. This is true across the myriad of functions and services we perform for our people. Although we consider the United States a valued partner in our efforts, we ultimately must chart our own course. The Declaration provides a valuable reiteration of the fundamental principles embodied in the law and policy of the United States. We look forward to working with Congress to fully realize the promises of those fundamental principles.

Once again, we thank you for the opportunity to submit this testimony.

PREPARED STATEMENT HON. KEVIN C. KECKLER, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE

We, the Cheyenne River Sioux Tribe, welcome the efforts of the Senate Committee on Indian Affairs in the recent oversight hearing regarding "Setting the Standard: Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples." In this hearing, the Committee explored the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as an international policy goal, to which the United States is a signatory. It examined the current ways in which existing domestic policy furthers the aims of UNDRIP, as well as additional domestic policy considerations which could make the United States a world leader in indigenous rights and implementation of UNDRIP. We support the United States in its goal of becoming the world leader in indigenous rights, and request to be involved in the development and implementation of UNDRIP.

The Cheyenne River Sioux Tribe, a member of the Great Sioux Nation, would like to raise some of our concerns, beliefs, requests and recommendations on the UN Declaration on the Rights of Indigenous Peoples. The following are our comments on behalf of the members of the Great Sioux Nation. We are proud of this great and historic day for Indigenous Peoples.

We write in response to Chairman Alaska's request for a two week comment period beginning June 3, 2011. We respectfully request that we be allowed additional time to comment further on, in more detail, the following boxed passages are our comments on specific provisions of the forty-six (46) Articles of the Declaration.

We, the Cheyenne River Sioux Tribe, member of the Great Sioux Nation, endorse the following resolutions of the UN General Assembly:

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

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

Reaffirming also 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 and resources,

Further recognizing the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to 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 also 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,

Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

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

Also considering 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 affirm the fundamental importance of the right of 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 of 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, 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 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,

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.

The Cheyenne River Sioux Tribe firmly believes in the statements made above, as well as in the following six (6) Articles of the United Nations Declaration of the Rights of Indigenous Peoples. At this point in history, our need for self-determination is critical. The future of Indigenous Peoples depends on our autonomy and ability to direct the development of our economies, our cultures and our societies. In today's globalized society, pursuing justice in world affairs requires that we consider the effect of actions and events on all peoples and life forms living on our planet. We recognize our relationship with *Unci/Ina Maka Grandmother/Mother Earth*, and with our brother and sister nation states of the world.

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 Rights 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.

The CRST believes that all Peoples should be free from discrimination. Indigenous Peoples have historically been denied this basic Human Right and have been denied equality under the law.

Article 3

Indigenous peoples have the right of 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 rights 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.

The CRST is a constituent member of the Great Sioux Nation. We advocate the establishment of a Great Sioux Nation National Council, for representation of our people and for traditional governance over our members, lands, natural resources, and economy.

The CRST believes in the statements made in Article seven (7) and eight (8) as noteworthy and critical in setting and adhering to international human rights. The recognition and input of policy development that will strengthen the standard of equality, freedom, peace, and security with State/States and Indigenous Peoples that will reflect the underlining meaning in the following Articles.

The CRST takes particular note of Articles seven (7) and eight (8), which incorporate elements of international human rights policy. The principles they espouse are fundamental to indigenous rights. Policy reflecting these principles will strengthen our standards of equality, freedom and peace, and bring security to relations between Indigenous Peoples and the nations and states in which they exist.

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.

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 by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(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 the 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 practice 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, artifacts, 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, practice, 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 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 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.

The CRST recommends the development of Article 14 to the fullest extent possible. Control of our educational systems and institutions is to the survival of our People. Our future is found in our past; the ongoing survival of our culture and language depends on our ability to steep our children in our history and traditions. Our Native culture has been continually denigrated over the course of history. A history of assimilations policies has placed our languages on the verge of extinction. Even the triumphs of Native languages have been downplayed in Western recantations of history. North American Native languages were utilized as codes in World War II; the critical role of these code talkers in securing victory, however, went unrecognized for decades.

All children should be afforded a good education free from discrimination and bullying. Indigenous Peoples around the globe must be allowed to stretch their wings, partake in education and access the traditional knowledge which has historically been suppressed. The Bureau of Indian Education utilizes some colleges in America for testing. Indigenous Peoples should be allowed to explore global educational techniques in shaping their own educational systems. Improvements in traditional education, teaching and classrooms will enable Indigenous Peoples to keep up with leading countries in education.

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 labor 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 labor 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 developments 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 programs affecting them and, as far as possible, to administer such programs 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.

The CRST is aware that the Great Sioux Nation has been discriminated against over the course of United States history, and has been denied due process of the law regarding the taking of their lands. Indigenous Peoples of America faced the loss of their lands, resources and property, which were taken as if tribes had no claim to them at all. For example, the 1823 Supreme Court decision of *Johnson v. McIntosh* propounded the

“Doctrine of Discovery” which underlies all subsequent treatment of Native Americans by the United States and its Courts, Congress and Executive. This effectively states that, though aboriginal peoples had occupied lands since time immemorial, the conquering nation (under its own laws) could take title to these lands for “discovering” them. The 1831 Supreme Court case of *Cherokee Nation v. Georgia* characterized the relationship between the United States and Indian tribes as like that of a “ward to its guardian,” patronizingly recognizing an amorphous power the United States could wield over tribes. These rulings symbolize the inequitable basis upon which the United States has historically dealt with its indigenous people. The United States committed many great wrongs against the Indigenous Peoples of America. One such example was the illegal taking of the He Sapa Black Hills in South Dakota, in which the United States seized lands most sacred to the Sioux.

The time has come for equality under the law! Full legal equality cannot be founded upon inherently inequitable precedents. We request substantiation—evidence that these articles are not mere words but promises to action. Only direct action by the U.S. can begin to reverse the consequences of centuries of unjust dealings, which impoverished and made powerless the First Americans of the United States.

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, of a 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 programs

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 programs for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

The CRST requests that Congress and all federal agencies involved in extraction of minerals and natural resources (including, but not limited to, the Bureau of Land Management, US Corp of Engineers, Minerals Management Services, and the Nuclear Regulatory Commission) be held accountable to the American people and to this planet. Indigenous Peoples have lived for thousands of years on American soil. Today, the balance of life on our grandmother/mother earth has tilted to a perilous degree; only the Creator knows when she will right the wrong that has been perpetrated upon her by continuous drilling, mining, polluting, and pillaging of her resources. The oceans of the planet are at a critical state of pollution, and the air is becoming more poisonous to breathe. The land we live on is becoming toxic by all the dumping of chemicals and waste upon her. The time has come to end this destructive behavior, and reign in the under-regulated practices which are harming our planet. The prophecy of our Indigenous Peoples in America tells of this time. It tells that man is the cause; so too can he be the solution—if he chooses.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to 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 their 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 honor and respect such Treaties, Agreements and other Constructive Arrangements.

2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and 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.

The CRST requests immediate remedial measures, implemented to correct historical wrongs that have been perpetrated against Indigenous Peoples of America. Past governmental policies, judicial and laws have perpetrated genocide and ethnocide, and in some cases have caused the extinction of entire Peoples. To fully achieve the ends of this Declaration and become the world leader in Indigenous Peoples' Human rights, the United States must account for its past failures and move forward with new policies.

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 have 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 rights 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.

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, 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, and respect for human rights, equality, non-discrimination, good governance and good faith.

In closing, the Cheyenne River Sioux Tribe would like to thank the Senate Committee on Indian Affairs for allowing our comments on the UN Declaration on the Rights of Indigenous Peoples. In stating his support for UNDRIP, President Obama emphasized that, though this is not a legally binding document, the First Americans' issues and concerns should receive the attention that has been historically denied.

As Indigenous People of America, we request that the shackles of history be removed. The CRST request that the U.S. State Department establish an International Indigenous Office in consultation with the U.S. government and Indigenous Peoples worldwide. The educational aims of UNDRIP *must* be supported by action—the survival of our people, language and culture depends on it. The United States must actively support self-determination and autonomy of Indigenous Peoples. It is necessary that a line of communication be opened to cover the concerns of affected Indigenous Peoples regarding UNDRIP beyond this mere two week comment period. We respectfully submit our comments and request additional time for further comments on the UN Declaration on the Rights of Indigenous Peoples.

PREPARED STATEMENT OF THE PUYALLUP TRIBE OF INDIANS

The Puyallup Tribe of Washington wishes to thank the Committee for the opportunity to present testimony on the domestic policy implications of the United Nations Declaration on the Rights of Indigenous Peoples (hereafter the Declaration). We also thank Chairman Akaka for his call to us and all those who care about these issues to consider what specific legislation is needed so that the United States can truly support the Declaration. We believe that although the adoption of the Declaration was an important step forward, of equal importance is what steps we take next.

As we noted in our comments to Ambassador Rice on July 15, 2010 and October 29, 2010, the Declaration is fundamentally consistent with the law and policy of the United States. See letters of July 15, 2010 and October 29, 2010 from Douglas Endreson to Ambassador Susan E. Rice (expressing the commenting Tribes' support for the U.S. endorsement of the Declaration). The law and policy of the United States are characterized by two fundamental tenets: the government to government relationship between the United States and tribes and the policy of self-determination. This framework underscores the importance of our ability to make decisions for ourselves.

Sadly and all too often the United States has fallen short of its duties and obligations to Indian tribes. But it is not our purpose here to focus on the past. Instead, the Declaration sets the standard for what our nations' relationship can and should be. The adoption signifies a new step in the shared story of our nations. We look forward to working together with the United States to realize the future envisioned by the United States' legal framework and the Declaration.

The Puyallup Tribe is a federally recognized Tribe located in Pierce County, Washington along the shores of Commencement Bay, a large inlet of Puget Sound. The history of relations between the United States and our Tribe is spotted, but in recent decades we have made great strides forward achieving recognition of our Treaty rights, restoring our Tribal land base, and developing programs to better serve our members.

The Reservation consists of approximately 28 square miles in Pierce County, and includes the city of Fife and portions of the city of Tacoma. Today, the Tribe has more than 4000 members. Further, in addition to serving our members, we serve more than 25,000 Native Americans from over 355 federally recognized tribes and Alaskan villages, who, due to the Indian relocation program of the 1940s and 1950s, now call the area on and around the Puyallup Reservation home. These services include law enforcement services, elder services, health care services, and educational services.

While working to support our people culturally, socially, and economically, we often encounter barriers from other government organizations. The Declaration offers a framework for identifying those barriers and creating new pathways to enable tribal governments to function more efficiently. We have identified a few such areas that are of particular concern to us, but these examples are not exhaustive. We look forward to working with Congress to improve our ability to serve our people in all the domains of our Tribal government.

a) Environmental Policy

As evidenced by many international agreements and compacts, the environment and its concerns do not respect international borders. Although we have exercised our regulatory authority over the land and resources within our borders, we cannot truly address the needs of our people for healthy ecosystems and environments without working closely with the international community at our borders.

Much of the current legal framework recognizes our place at the table: For instance, both the Clean Air Act and the National Environmental Protection Act make provisions for tribal stewardship of our resources. The Declaration supports these efforts by providing that 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 programs for indigenous people for such conservation and protection, without discrimination." Declaration, art. 29.

In order to meet the calls of both United States statutes and the Declaration, we must participate with our international neighbors in addressing the conservation of our resources. In order to do so, the United States must secure access for a tribal presence in any discussion or negotiation on these issues and recognize tribal governments' indispensable part in the process. This entails recognizing our international ties and relations and allowing us free movement across borders. It also means a strong effort on the part of the United States to both always be cognizant of the needs of tribes when they negotiate on these issues and perhaps more importantly, ensuring a seat for tribes at any such negotiation.

We depend on our natural resources for the economic, cultural, and spiritual health of our Tribe. We have much to offer in the pursuit of our common goal of protecting the health of our land. But in order to do so, in order to meet the needs of our people, and in order to be able to fully exercise our rights under the treaty governing statutes and the Declaration, the United States must recognize our place at the table. Only together can we achieve success.

b) Economic Opportunities

Our Tribe is proud to be in the process of developing a new international container terminal facility that, when fully constructed, will be the largest in the Pacific Northwest. Our ability to take on such a project was facilitated by the historic Settlement Agreement between our Tribe, the Port of Tacoma, the State of Washington, several local county and city governments and the United States and was enacted by Congress. Puyallup Tribe of Indians Settlement Act of 1989, Pub.L. No. 101-41 (*codified at 25 U.S.C. § § 1773 et seq.*). This agreement included a provision recognizing the right of our Tribe to engage in foreign trade consistent with Federal law. We anticipate developing relationships with international trade partners in the Pacific Rim and around the world and are very excited about the economic opportunities this gives us.

Again, much of the current legal framework seeks to enable such ventures. Starting with the Indian Self-Determination and Educational Assistance Act, the United States policy has been to encourage economic development and self-sufficiency, including the Indian Gaming Regulatory Act, 25 U.S.C. § § 2701 *et seq.*, and the Native American Business Development, Trade Promotion and Tourism Act, 25 U.S.C. § § 4301 *et seq.* More recently, Congress enacted a law expanding our ability to lease tribally-owned land, especially for the development of economic opportunities. Pub.L. 111-336. This law will help accelerate leasing opportunities with national and global partners and will eliminate the risk of losing opportunities due to the lengthy approval process currently in place. By doing so, it will help fuel our economy.

The Declaration also recognizes the importance of economic stability, providing indigenous peoples the right to “maintain and develop their . . . economic . . . 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.” Declaration, art. 20. But as the Declaration also recognizes, the ability to exercise such rights is not ensured simply through recognition of the right. *See* arts. 38, 39. Instead there must be assurance that barriers preventing the exercise of such rights will be addressed by States. Thus, the Declaration provides that indigenous peoples must “have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.” *Id.* art. 39.

In order to pursue economic opportunities such as the container facility, we must have the cooperation of the United States. Our ability to enter into trade agreements depends on the continued reduction of barriers like those created by the original land leasing structure. Tribes must have the right to freely negotiate with economic partners and we cannot be constrained by requirements that limit our ability to enter into contracts or require that we receive approval from the Bureau of Indian Affairs before proceeding forward. With regard to accessing Capital to move forward with these ventures, Congress should seek to expand tribal bonding authority and increase investment into tribal infrastructure, including roads and telecommunications.

c) Social and Behavioral Health: Addressing the Problem of Gangs

Our Reservation has not remained immune from the gang problems afflicting many urban areas in America today. We take seriously the provision of public safety in all of our communities, and we have met this current challenge through public safety programs, educational outreach, and social and behavioral health programs. Our efforts, especially in the public safety domain, however, are subject to the jurisdictional realities of our Reservation. There are six overlapping jurisdictions within our borders—Tacoma, Fife, Milton, Puyallup, Edgewood, and Federal Way.

As is true with other public safety concerns, addressing the gang problem will take a concerted effort from all the stakeholders and community members. Gang members move freely between jurisdictions, and thus, to be effective, all six jurisdictions must work together productively. Faced with this reality, we are proud to be part of the county multi-jurisdictional team working to ensure the safety of our communities. Currently, we have six officers working on this team and two officers who work on steering committees to address gang issues.

Such efforts are clearly supported by United States law, which states that in the absence of federal statutes limiting it, tribal criminal jurisdiction over our members

within our Territory is complete, inherent, and exclusive. See *Ex parte Crow Dog*, 109 U.S. 556 (1883). Although Congress has stepped in from time to time to limit this jurisdiction, tribes today remain vital providers of law enforcement in Indian Country. In fact, Congress recently highlighted the importance of tribes in the public safety domain by passing the Tribal Law and Order Act which, among other things, increased the tribal court sentencing authorities where certain conditions are met and allowed deputizations of tribal police officers to enforce federal law on reservations. Tribal Law and Order Act of 2010, Pub.L. 111–211. The Declaration by recognizing the importance of these rights, pushes the United States to not only acknowledge the rights of tribes in theory but to put those rights into practice. See Declaration, arts. 4, 7, 34.

Our voluntary cross-jurisdictional work with our neighbors is an important step, one that recognizes the vital and equal role tribes play in the provision of public safety. However, there is still more to be done, especially at the federal level, to ensure the ability of tribes to provide safe and secure communities. One step forward in this effort would be to pursue the President's suggestion of streamlining funding to tribes for Office of Justice Programs by initiating meaningful consultation with tribes regarding the program development and allocation methodology of the funding on the FY 2012 for CJS Programs.

As history has taught us, tribes do better when we make decisions for ourselves. This is true across the myriad of functions and services we perform for our people. Although we consider the United States a valued partner in our efforts, we ultimately must chart our own course. The Declaration provides a valuable reiteration of the fundamental principles embodied in the law and policy of the United States. We look forward to working with Congress to fully realize the promises of those fundamental principles.

d) Ensuring Our Rights to Our Land

Our tribe is organized pursuant to the Indian Reorganization Act (IRA). We adopted our Constitution in 1936 (Puyallup) 1937 (FCPC). As noted earlier, we provide many governmental services to our peoples and are recognized by the Federal Government as a tribe possessing inherent sovereign powers. Our ability to act as such, however, is threatened by the decision of the United States Supreme Court in *Carcieri v. Salazar*, 555 U.S. ____ (2009), which that the Secretary of the Interior did not have the authority to take land into trust for the Narragansett Tribe of Rhode Island because that Tribe was not “under federal jurisdiction” in 1934.

The *Carcieri* decision is fundamentally at odds with the fundamental principles of the government-to-government relationship and tribal self-determination. It is also at odds with the long history of Congressional and Executive policy following the passage of the IRA. The purpose of the IRA was to stop the policy of allotment which was decimating tribal land holdings, rebuild the former tribal land base, and ensure a future of self-determination for tribes. The trust relationship between the United States government and tribal governments is one of the main vehicles to fulfilling these goals. By limiting the ability of the government to take lands into trust to only certain tribes, the Court seriously threatened the ability of all tribes to perform essential services for their people, from public safety to education to health care.

The *Carcieri* decision is also fundamentally at odds with the Declaration. The Declaration recognizes first, that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Dec. art. 26. The Declaration further recognizes the rights of indigenous peoples to “a fair, independent, impartial, open and transparent process . . . to recognize and adjudicate the rights of indigenous people pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.” *Id.* art. 27. Finally, the Declaration recognizes that 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.” *Id.* art. 28.

The lands that are being taken into trust by the Department of the Interior are lands that were, prior to allotment, owned by indigenous peoples. One of the purposes of the IRA was to stop the wholesale decimation of Indian lands that occurred under allotment. And to suddenly reverse a policy course which has been followed for 75 years and dramatically reduce the rights of indigenous peoples to their traditional lands is fundamentally not fair, it's not open, and it's not transparent.

Congress has the power to reverse this mistake and we thank Chairperson Akaka for introducing S. 676 and his work on this important matter. We call on all the

members of the Committee and Congress to come together to support this important legislation, which will bring our law back in line with the fundamental tenets of Federal Indian law and in line with the Declaration.

Once again, we thank you for the opportunity to participate in this discussion.

PREPARED STATEMENT OF ROBERT ODAWI PORTER, PRESIDENT, SENECA NATION OF INDIANS

Dear Senator Akaka and distinguished members of the Committee,

Thank you for the opportunity to address this honorable Committee on the domestic policy implications of the *United Nations Declaration on the Rights of Indigenous Peoples (Declaration)*.¹ The Seneca Nation views the United States' endorsement of the *Declaration* and this Committee's work as significant steps towards the enforcement of our treaty rights. We understand the *Declaration* as a recognition and affirmation of its existing Treaty relationship with the United States.

This Committee has asked, "What is next now that there is a *Declaration*?" Where a Treaty relationship exists, the United States must work with its Indigenous Treaty partner to ensure that the rights and obligations affirmed by the *Declaration* are protected, respected and fulfilled. In my written testimony, I will focus on the Articles that, if implemented, would have the greatest impact on the realization of the promises and rights that our Treaties contain.

Honor and Respect Treaty Rights

In accordance with Article 37, the United States must honor and respect our Treaties.² We call on our Treaty-partner to respect, protect and fulfill the Seneca Nation's right to the recognition, observance and enforcement of our Treaties.

¹ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/Res/61/295 (2007).

² *Id.*, Article 37(1) states:

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.

Acting in our capacity as a self-determining people and as a sovereign Nation, in the 18th and 19th centuries the Seneca Nation signed Treaties with the United States that ensured our exclusive ownership and governance of our territories. Both the Treaty of Canandaigua of 1794 between the United States of America and the Six Nations of the Haudenosaunee (Iroquois Confederacy)³ and the Treaty of May 20, 1842, between the United States of America and the Seneca Nation of Indians (the Buffalo Creek Treaty),⁴ the United States acknowledged the Seneca Nation's right to the "free use and enjoyment" of Seneca lands in exchange for the Seneca Nation's promise of peace and friendship with the United States.

When the Seneca Nation and the United States signed the Treaties, both Treaty partners understood they were entering the Treaties on a Nation-to-Nation basis. The Seneca Nation negotiated these Treaties as a strong, sovereign Nation living alongside the border of a young and vulnerable United States. At the same time that Treaty-making was taking place, the Supreme Court of the United States was applying the Law of Nations to our Treaties. For instance, in 1832 Chief Justice Marshall affirmed that a Treaty with an Indigenous Nation was the same as a Treaty with any other sovereign Nation.⁵ Today, these Treaties remain the supreme law of the land pursuant to the U.S. Constitution.

In spite of the early recognition of the binding and international nature of our Treaties by the United States government and courts, today we face battle after battle to have our Treaty rights recognized, respected and enforced. The United States has violated and infringed the historic Treaties and has failed to respect or honor its treaty relationship. The history of the Treaty relationship between the Seneca Nation and the United States demonstrates that there is a need to once again recognize the equality of the Treaty partners within the treaty relationship.

Free, Prior and Informed Consent and Treaty Rights

The principle of "free, prior and informed consent" contained in the *Declaration*⁶ should be adopted and respected by the United States and all federal laws, policies and administrative actions should be reviewed and revised to ensure this standard is met. The United States must legislate to ensure that all level of government obtain the free, prior and informed consent of Indigenous peoples before making decisions that affect them.

Before proceeding with any decision that will affect Indigenous peoples, the United States should ensure that the affected Nation or Nations have been consulted and that their consent has been obtained. There has been a great deal of emphasis placed on consultation by the United States government. However, consultation alone is not enough. The standard set out in the *Declaration* is "consent", and this is what we urge the United States to implement through legislation and to enforce in its Courts.

³ 7 Stat. 44, Art. 7, reprinted in INDIAN AFFAIRS: LAWS AND TREATIES, vol. II, 34-37 (C. Kappler ed., GPO 1904).

⁴ 7 Stat. 586, Art. Ninth, reprinted in INDIAN AFFAIRS: LAWS AND TREATIES, vol. II, 537-542 (C. Kappler ed., GPO 1904), which provides that "[t]he parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession from all taxes . . ."

⁵ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559-60 (1832).

⁶ The *Declaration*, *supra* note 1, refers to free, prior and informed consent in Articles 11.3, 19, 28, and 30.2.

When the United States makes a decision that affects one of its Indigenous Treaty-partners, the principle of free, prior and informed consent obliges the United States to refrain from acting without its Indigenous Treaty partner's agreement. Nor can the United States modify or terminate a Treaty right in the absence of the Indigenous Treaty partner's consent.

Article 19 of the *Declaration* states that States should obtain the free, prior and informed consent of Indigenous peoples "before adopting and implementing legislative or administrative measures that may affect them."⁷ At this moment, the Seneca Nation is contesting a breach of this right before Federal and state Courts. The New York State Governor and Legislature have taken legislative measures to impose a tax on our tax-free tobacco trade,⁸ which the *Casasiquet* Treaty and the *Buffalo Creek* Treaty protect.⁶ The Seneca Nation was not consulted on the amendments and never consented to the imposition of this tax by New York State. We call on the United States to protect the Seneca Nation, as its Treaty partner, from this violation of our historic Treaty rights by immediately requiring New York State's compliance with the principle of free, prior and informed consent.

One of the most destructive violations of our Treaty rights occurred in the 1960s, when, without our consent and in the face of our opposition, the United States flooded one third of our Allegany territory, guaranteed to us in our Treaties, in order to build the Kinzua Dam for the benefit of non-Seneca communities down river. The dam forced the relocation of 800 Seneca people whose homes sat on our now flooded land; ten thousand acres once rich in forests, wildlife, crops and medicinal plants remain under water.

The United States should have obtained our consent for the flooding of our land and utilizing our water resources that power the dam that adversely impacted our territory. This obligation is now affirmed in Article 32 of the *Declaration*, which states that Indigenous peoples have the right to determine and develop priorities for the development or use of their lands and affairs that States have the obligation to "obtain their free prior and informed consent prior to the approval of any project affecting their lands or territories or other resources, particularly in connection with the development, utilization or exploration of mineral, water or other resources."⁹

When we appealed to the United States judicial system to prevent the flooding of our lands, the blatant breach of our Treaty rights was upheld by the United States Supreme Court.⁸ Although the Court of Appeal observed that there was no dispute that the flooding would infringe the Seneca Nation's Treaty rights, it held that Congress had authorized the taking of the Seneca Nation's lands, based upon the doctrine of eminent domain. The United States Supreme Court denied our appeal. To truly uphold the standards in the *Declaration*, the United States must legislate to end Congress' authority to unilaterally override or abrogate Treaty rights.

⁷ See N.Y. Chapter Laws, Ch. 134 (2010).

⁸ Under the *Buffalo Creek* Treaty, *supra* note 4, the United States and the Seneca Nation agreed to protect the Seneca Nation's lands from all taxes.

⁹ *Seneca Nation v. Bricker*, 262 F.2d 27 58, 58 (D.C. Cir., 1958), *cert. den.*, 360 U.S. 909 (1959).

Redress for Violation of Treaty Rights

It is still not too late for the United States to provide the Seneca Nation with redress for the taking of our Treaty guaranteed territory. The *Declaration* requires States to protect and fulfill Indigenous peoples' right to redress "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."¹⁰ Legislation is clearly required to redress a long history of takings of Indigenous peoples' property in the United States.

Immediately, redress can start through taking simple steps. For instance, reducing the water in the Allegheny Reservoir would return a significant amount of Seneca Nation's Allegheny territory, which is currently underwater. Another step would be to support the Seneca Nation's application to run the Kinzua Dam's pumped storage hydropower generation facility (the Seneca Pumped Storage Project), which would enable the Seneca Nation to finally benefit from the project affecting its land, 50 years after construction first began. Ultimately, the Nation should receive replacement acreage for the lands lost to the Kinzua Reservoir.

Dispute Resolution

It is clear that Indigenous peoples need an impartial and fair dispute resolution mechanism to address Treaty violations. Even now, United States courts are applying Court-created doctrines of Federal Indian law that do not respect Indigenous peoples' Treaty rights. We recommend that the United States act on the obligation contained in Article 40, by establishing a tribunal that will fairly address treaty disputes and gives due consideration to "the legal systems of the indigenous peoples concerned and international human rights."

In addition, the United States should participate in the dispute resolution process provided for in the Treaties. The Comandaga Treaty provided a method of redress when disputes arise, which is based upon a complaint process that opens dialogue between our two Nations. Resolving Treaties should also involve the use of those Treaty mandated processes when issues between the parties arise.

Implementing the Declaration as Treaty-Partners

We urge the United States to honor United States work with its Indigenous Treaty partners as equals to implement the *Declaration* on a Nation-to-Nation basis. To keep on moving towards the realization of the goals of the *Declaration*, we call on our Treaty-partner to adopt the *Declaration* formally and without qualifications and to fully respect the rights and obligations it contains.

This May, the Seneca Nation made a statement at the United Nation's Permanent Forum on Indigenous Issues, where we spoke of the urgent need for the United States to implement the *Declaration*, a copy of which is attached for the Committee's review. The work of your Committee is a positive indication that the United States is moving forward with this necessary and urgent task.

Over our long history, we have upheld our Treaty promises and made many concessions to our Treaty partner, the United States. We now look to you to honor and respect our Treaties, our sovereignty and our Nation.

¹⁰ *Declaration*, *supra* note 1, Article 28.

Attachment: The Seneca Nation's Statement to the United Nation's Permanent Forum on Indigenous Issues, delivered by Councilor Niki Seneca on May 25, 2011.

Tenth Session of the United Nations Permanent Forum on Indigenous Issues
New York, May 16 to 27, 2011

Agenda Item 8: Future work of the Permanent Forum

STATEMENT OF THE SENECA NATION OF INDIANS
May 25, 2011

Delivered by Nildid Seneca, Seneca Nation of Indians

Honorable Chair and esteemed Members of the Permanent Forum,

The Seneca Nation of Indians thanks you for the opportunity to take part in the tenth session of the Permanent Forum. This is the first session of the Permanent Forum that a delegation from our Council has attended and we welcome the opportunity to join with the many distinguished delegations of Indigenous peoples at the international level to affirm our rights as a sovereign Indigenous nation.

We are very proud of the on-going participation by Seneca Nation youth at the Permanent Forum sessions. They are joining the international community at a time when the *Declaration* has been adopted by the UN and supported by the United States. The future work that lies ahead for them, and for all of us, is achieving compliance with the *Declaration*, so that the rights and obligations it contains are respected and fulfilled.

Acting in our capacity as a self-determining people and as a sovereign nation, in the 18th century the Seneca Nation signed a series of Treaties with the United States that ensured our exclusive ownership and governance of our territories. In the Treaty of Canandaigua of 1794, the United States acknowledged the Seneca Nation's right to the "free use and enjoyment" of Seneca lands in exchange for the Seneca Nation's promise of peace and friendship with the United States. The Seneca Nation negotiated these Treaties as a strong, sovereign nation living alongside the border of a young and vulnerable United States.

When the Seneca Nation and the United States signed the Treaties, both Treaty partners understood they were entering the Treaties on a Nation-to-Nation basis. At the same time that Treaty-making was taking place, the Supreme Court of the United States was applying the Law of Nations to our Treaties. For instance, in 1832 Chief Justice Marshall affirmed that a Treaty with an Indigenous nation was the same as a Treaty with any other sovereign Nation.¹

The highest Courts in New Zealand, Canada and Australia have all acknowledged that Chief Justice Marshall's decisions regarding the relationship between Indigenous peoples and the State were based upon principles of international law.

Honorable Chair, Members of the Permanent Forum,

We testify that the United States has not respected or honored its historic Treaties with the Seneca Nation. For instance, in the 1960s, the United States built the Kinzua dam and flooded one third of our Allegany territory, territory that was guaranteed to us under our Treaties. It did so without our consent and in the face of our opposition, and for the benefit of non-Seneca communities down river built within naturally occurring flood zones. The United States' dam construction activities forced the relocation of 600 people whose homes were where the dam reservoir now sits; ten thousand acres of our land once rich in forests, wildlife and crops remain under water. This was an egregious breach of our Treaty rights which was unfairly upheld by the United States Supreme Court. The current flooding of the Mississippi and its tributaries is met with sympathy and prompt government remedial action. Our lands meanwhile lie beyond our reach and our economic use—a state sanctioned taking.

Does the Constitution of the United States not provide that Treaties are the supreme law of the land? Does international law not require the State to honor and respect our Treaty?

The continued violation of our Treaties demonstrates that respect for Treaty rights and States' obligations to respect and honor Treaties should remain an integral part of the Permanent Forum's future work.

Our culture, society and economy are threatened by the failure of our Treaty partner to live up to the legally binding promises it made to us under our Treaties. We are here at the Permanent Forum to remind our Treaty partner that "might does not make right" and that international law holds States accountable for observing their obligations.

It is clear that Indigenous peoples need an impartial and fair dispute resolution mechanism that uses international law to address Treaty violations.

We request that the Permanent Forum recommend that the Expert Mechanism on the Rights of Indigenous Peoples act on the conclusions of the First and Second United Nations Seminar on Treaties, Agreement and other Constructive Arrangements between States and Indigenous Peoples, to examine the international nature of Indigenous-State Treaties and provide recommendations for developing a mechanism at the international level for resolving conflicts arising from Treaties.

¹ *Worcester v. Georgia*, (1832) 31 U.S. (6 Pet.) 515, 559-60.

Respect for Treaty rights entails respect for all the rights contained in the *Declaration*, in particular, Indigenous peoples' rights to self-determination, culture, lands, territories and resources and the right to development.

The Seneca Nation has the capacity to develop a strong economy that would support and nurture the social and cultural well-being of our people. However, our Treaty partner has often acted to prevent our right to economic development.

The right to development is a key aspect of Treaty rights. Article 37 should be read with Article 20 (the right to engage freely in all economic activities) and Article 21 (the right, without discrimination, to the improvement of economic and social conditions). It should be interpreted in conjunction with Article 32, Indigenous peoples' right to freely dispose of their natural wealth, which is guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the right to development contained in the *Declaration on the Right to Development*.

The Seneca Nation requests that the Permanent Forum continue to support the development of the legal framework for the implementation of Article 37 of the *Declaration*, with a particular emphasis on the intersection between Treaty rights and Indigenous peoples' right to development.

When President Obama announced the United States' support of the *Declaration* in December 2010, he stated that what mattered most were actions to match the words of the *Declaration* and that he hoped "that we are seeing a turning point in the relationship between our nations."

In addition to the recommendations above, the Seneca Nation respectfully requests that the Permanent Forum make the following recommendations:

1. Encourage the United States to move forward with the implementation of the *Declaration* so that its adoption does represent a turning point for the respect of the rights of Indigenous peoples.
2. Urge the United States to honor and respect its Treaty obligations with Indigenous peoples, which includes respecting the right to economic and social development and the right to develop natural resources, and to work with its Treaty partners to implement the *Declaration* as equals, on a Nation-to-Nation basis.
3. Recommend that States that have Treaties with Indigenous peoples commit to implementing the *Declaration* with their Indigenous Treaty partners as equals, using the Treaties as a framework for the implementation.

We join with the other distinguished delegates who have requested that the Permanent Forum continue its call for the 3rd UN Seminar on Treaties, Agreements and Other Constructive Arrangements to be held in 2012 with the support of the Office of the High Commissioner for Human Rights.

Thank you.

PREPARED STATEMENT OF THE U.S. DEPARTMENT OF STATE

On December 16, 2010, at the second White House Tribal Nations Conference, President Barack Obama announced that the United States was lending its support to the UN Declaration on the Rights of Indigenous Peoples (the "Declaration"). The President stated that "[t]he aspirations it affirms—including the respect for the institutions and rich cultures of Native peoples—are one[s] we must always seek to fulfill." The Administration also released a document, which was referenced in the President's announcement, titled "Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples—Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples"—about U.S. support for the Declaration and the Administration's ongoing

work in Indian Country. The text of this statement can be found at: <http://www.state.gov/documents/organization/153223.pdf>

Background on the UN Declaration on the Rights of Indigenous Peoples

The Declaration was drafted under the auspices of the United Nations and involved representatives of member states, indigenous peoples, and other stakeholders.

On September 13, 2007, the United Nations General Assembly adopted the Declaration by a vote of 143 in favor and four against. Eleven countries abstained from the vote (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine) and 34 countries did not participate. The United States, Australia, Canada, and New Zealand voted against adoption of the Declaration.

In the last few years, all four countries that voted “no” have changed their position. Samoa and Colombia have also lent their support to the Declaration.

As explained in the Announcement document that accompanied President Obama’s remarks, the Declaration is “not legally binding or a statement of current international law” but has “both moral and political force.” It expresses both the aspirations of indigenous peoples around the world and those of States in seeking to improve their relations with indigenous peoples.

The U.S. Review of its Position on the Declaration

The decision to review the U.S. position on the Declaration came in response to calls from many tribes, individual Native Americans, civil society, and others in the United States, who believed that U.S. support for the Declaration would make an important contribution to U.S. policy and practice with respect to Native American issues. This message was delivered by many people in many contexts but, perhaps most importantly, tribal leaders expressed this view directly to President Obama and other senior Administration officials at the White House Tribal Nations Conference on November 5, 2009.

On April 20, 2010, at the United Nations Permanent Forum on Indigenous Issues, Ambassador Susan Rice, the Permanent Representative of the United States to the United Nations, announced that the United States would undertake a review of its position on the Declaration and that it would do so in consultation with Indian tribes and with the input of interested nongovernmental organizations.

In reviewing the Declaration, all interested U.S. Government agencies had an opportunity to review the text of the document and provide their views on whether the United States should support it. Each agency was asked to compare the instrument to U.S. laws, regulations, policies and practices in its area to determine the degree to which the provisions of the instrument were already reflected in those laws, regulations, policies and practices or could be in the future.

Because of the subject of the Declaration, in conducting their reviews of the Declaration U.S. agencies consulted extensively with tribal leaders. The agencies held three rounds of consultations, one in Rapid City, South Dakota, and two in Washington, D.C. In addition, the agencies conducted outreach to indigenous organizations, civil society, and other interested individuals. Tribal leaders and others contributed to the review through their attendance at the consultation and outreach sessions, participation in those sessions by means of conference calls, and written submissions. In total, over 3,000 written comments were received and reviewed.

The conclusion of the interagency review was that the United States could support the Declaration so long as that support was accompanied by appropriate understandings as set forth in the “Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples—Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples” referenced by President Obama in his statement of U.S. support for the Declaration.

U.S. Support for the Declaration

As described above, the UN Declaration was adopted by a vote of the UN General Assembly in 2007. There will not be another vote on the Declaration. Therefore, countries that have changed their position on the Declaration since 2007 have done so via public announcements of their new positions. President Obama’s announcement on December 16, 2010, and the accompanying Announcement document cited above, are the official U.S. statement of support for the Declaration. No further steps are required to indicate that the U.S. supports the Declaration.

U.S. support for the Declaration goes hand-in-hand with the U.S. commitment to address the many challenges faced by Native Americans throughout the United States. That commitment is reflected in the many policies and programs that are being implemented by U.S. agencies in response to concerns raised by Native Ameri-

cans, including concerns about poverty, unemployment, environmental degradation, health care gaps, violent crime, and discrimination.

Conclusion

The Department of State appreciates this opportunity to submit written testimony to the Committee on the important issue of U.S. Support for the UN Declaration on the Rights of Indigenous Peoples.

United Nations Permanent Forum on Indigenous Issues

Eighth Session May 20, 2009 UN Headquarters New York, NY

Agenda Item: 4 (a) Human Rights

Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Statement by Tupac Enrique Acosta, Yaotachcauh

Tlahtokan Nahuacalli, Izkalotlan Aztlán

O'odham Nations Territories, Abya Yala North

Good greeting to all my relatives, relations of Indigenous Peoples from around the world and distinguished members of the Permanent Forum:

Madam Chair,

Ayo. Today we are called to address collectively a review and follow-up on recommendations made to the Permanent Forum regarding implementation of the UN Declaration on the Rights of Indigenous Peoples. In the moment of reflection, and at a time of convergence that realizes the crises of climate change and global economic recession as the frame of collapse of the dominant planetary paradigms of human economic and social development, the work of the Permanent Forum and the self determination of the Nican Tlacah Cemanahuac – Indigenous Peoples of the World - also faces the challenge of redefinition and clarification.

At the initiation of this Eighth Session of the Permanent Forum, the Indigenous Peoples Global Caucus in our opening statement referred to this challenge as a foretelling of the call to all members of human society to recognize the **UN Declaration on the Rights of Indigenous Peoples** as a necessary instrument to address comprehensively and simultaneously the global climate crisis and economic recession as a mechanism of world peace.

As process and product of standard setting at global scale, the UNDRIP integrates the self-determination of Indigenous Peoples with the principle of peaceful coexistence among all peoples as a **Human Right**. The realization of the UNDRIP expresses the universal and fundamental reality of all systems of international jurisprudence, emerging from the evolving inter-relations of customs and usages of distinct peoples, and finally codification in the statutes and mandates of the government states, individually and collectively.

The UN Charter itself proposes to defend this process as an instrument of world peace, by implementing mechanisms of combined effort among the Peoples of the United Nations through international cooperation.

In review and follow-up to the recommendations made to the UNPFII over the past eight sessions, it is evident that taken as a whole, the implementation of the UNDRIP institutes a new systemic standard that calls for complementary readjustment among entities of the government states and the Nations of the Indigenous Peoples, normalizing peaceful relations based on mutual respect and cooperation.

The potential that this systemic standard may serve to assist in addressing the global climate crisis is only just beginning to emerge. By linking and codifying the principle of respect for cultural diversity with acknowledgement of collective ecological responsibilities, the UNDRIP establishes a new framework for the ancient principle of respect for Human Rights of the Future Generations of all peoples. The immediate challenge is to bring to scale the necessary economic policies of accountability to the processes driving the global economy, in accord with the parallel principle of global ecological responsibility.

That President Evo Morales of Bolivia has been successful in having the UN adopt the international day of Mother Earth, allows the glimmer of hope to reignite among the Indigenous Peoples of the world. We arrive at the Permanent Forum today in expectation of the foretold redefinition and clarification of the relationship of our human societies in relationship to the material world as one of a sacred and complementary nature and not the predatory patriarchal practices controlled by extractive industries whose corporations are driven only by profit and greed.

As so as we, the Nican Tlacah Camanahuac – Indigenous Peoples of the World move towards realization of our self-determination in conjunction with the work of the Permanent Forum, it is essential that we engage in a review as well of the guiding conceptual frameworks that have driven the processes of not only implementation strategies regarding the UNDRIP but the underlying paradigms of social cognition and policies of global governance related to the mandates of the UN Permanent Forum on Indigenous Peoples.

Clarification:

The Indigenous Peoples Global Caucus has submitted at this session the recommendation that the appropriate and special measures be undertaken, in view and review of the adoption of the UNDRIP, to redefine and clarify to the Permanent Forum on Indigenous Issues that future sessions of the Permanent Forum be implemented as convenings of the UN Permanent Forum on Indigenous Peoples.

In concurrence with this recommendation and in the spirit of self-determination, as stated by the distinguished Chairperson in her opening remarks, "It is imperative that effective and meaningful participation in decision making bodies at all levels is insured," we now submit that the shift in the framework of evaluation for mandates of the Permanent Forum called for by the UNDRIP is the necessary pivotal act in order to realize "effective and meaningful" implementation strategies related to the UNDRIP and the ongoing efforts of this Permanent Forum.

In this regard, the Indigenous Peoples Global Caucus has stated in our recommendation delivered in our opening remarks at this session of the Forum that:

"We affirm that the adoption of the Declaration on the Rights of Indigenous Peoples establishes a new framework of evaluation for the work of the Permanent Forum and all initiatives of the United Nations system."

Taking this point of departure to elaborate on the implications for the dual mandates of the Permanent Forum, let us state an initial point of clarification:

The redefinition of the Permanent Forum as an institution of the UN on **Indigenous Peoples**, insists that there be acknowledgement, affirmation in policy and protocols of procedure in realization of the fact that we, the Indigenous Peoples of the world in partnership with member states of the UN system, have agreed to collaborate in the agenda of the Permanent Forum in accord with a mutual understanding that we shall complement our efforts under a **Dual Mandate**.

This principle and clarification is necessary and called for by the new paradigm in international relations mandated by the UNDRIP, and the redefinition for standards of international diplomacy in relation to Indigenous Peoples that the Permanent Forum must exemplify and implement as lead programme for the UN system.

In fact this clarification is nothing new, but in fact reflects the ancient protocols of **Indigenous International Law**, the jurisprudence of reality that commands all human societies to live in equilibrium with the natural world and each other. We speak now of the laws of relationship among all the nations of life, whose constitution and charters are drawn by the intricate and powerful interdependence of ecosystems of the land, the waters, the winds, and the sacred fire.

In this context, and in complement to the principles referenced in the principles of the UNDRIP, the essential question is framed: Is the institution of the United Nations system an instrument of Human Society, a mechanism to promote sustainable social and economic development, or has the UN degraded itself into a tool of special interests and fractured allegiances driven by extractive economic processes that threaten to devour our very Mother Earth?

In response, the UN Permanent Forum on Indigenous Peoples is uniquely positioned at the threshold of potential to **conceptualize, act, evaluate and follow-up** on the challenges of addressing the issues of our collective agenda. In consequence, we submit the following affirmations and proposals for action:

- That the UNPFII take the necessary special measures to **acknowledge** and implement the UNDRIP as an **instrument of world peace** for all peoples.
- That implementation strategies of the UNDRIP across the UN system be complementary and systemic initiatives that link a Human Rights approach with the local, regional and international strategies addressing the climate change crisis.
- That the principle of **Free, Prior and Informed Consent** be respected and applied to the development and implementation of global economic infrastructures and recovery systems that operate as drivers of the global economy, as these may relate to the **Rights of Indigenous Peoples** in terms of self determination and development. In the context of the UNDRIP, and within the horizon of the real threats of the climate change crisis, the principle of Free, Prior and Informed Consent cannot be applied on a merely project by project or region by region basis, but must be a **systemic standard** and instrument to address the need for **cosmetic cultural transformation** of our human society as a whole.

- That economic indicators of the Indigenous Peoples globally outside of the monetary "market based" systems of the government states be brought forward in order to assess and evaluate priorities and effective strategies of economic and social development within a framework that links a Human Rights approach with collective ecological responsibilities. (Such as: Seven Global Currencies of the Indigenous Peoples – Life Sustaining Systems of Exchange and Complementarity).
- We again reaffirm the call by the Indigenous Peoples Global Caucus for the Permanent Forum carry out a study assessing the implementation of the Millennium Development Goals, contextualized by the new systemic standard of the Declaration on the Rights of Indigenous Peoples, such study to be presented at its 9th session in 2010.
- That as essential element in this process, the representation of regional organizations of the UN (such as the Organization of American States) respect the principles of self determination and Human Rights of Indigenous Peoples now codified in the UNDRIP, and mandated by UNGA 1514 and 1541. Specifically, we call upon the member states of the OAS to comply in respect of Universal Human Rights and in particular our Rights as Indigenous Peoples in relation to international borders of the states and national immigration enforcement policies across our continent of Abya Yula [the Americas].
- That the UNPFII, as act of implementation and systemic standard setting, prepare for the arrival and official archiving of the body of Treaties, Constructive Arrangements and Accords between the Nations and Pueblos of Indigenous Peoples and the government states of the UN system, to be implemented during the 9th Session of the Permanent Forum in 2010, and that the Martinez Treaty Study be integrated and updated accordingly.
- That the Secretariat of the UNPFII facilitate the officialization of interventions, oral and written, by the Indigenous Peoples Global and regional caucuses, delivered for submission to the UNPFII and in exchange among each other.
- That in follow-up to the above and in anticipation of emerging themes for future work, the UNPFII establish partnership with the diverse initiatives of the Indigenous Peoples across the planet in terms of Education and Human Rights of the Indigenous Peoples, in accord with the principles of the UNDRIP, and in particular as related to the development of complementary systems and services of social cognition, compilation and dissemination of bioregional planning instruments, such as the Indigenous Peoples Geography Project.

PREPARED STATEMENT OF VELDA SHELBY, CITIZEN OF THE KTUNAXA NATION

Please accept my personal testimony as part of the United States Senate Committee on Indian Affairs hearing on the United Nation's Declaration on the Rights of Indigenous Peoples. My name is Velda Shelby and I reside on the Flathead Reservation in Montana. I am a citizen of the Ktunaxa Nation enrolled with the Confederated Salish and Kootenai Tribes. The Ktunaxa Nation also known as the Kootenai Tribe consists of about 7,500 citizens who possess a distinct unique culture, an isolate language and family ties. Our nation is indigenous to the Rocky Mountain corridor of North America. The key issue I seek resolution to is border crossing jurisdiction for aboriginal peoples whose lands were severed by the U.S. Canadian International Border.

To achieve resolution, we must first restore the Ktunaxa Nation. Prior to the founding of the United States of America and the country of Canada, the Ktunaxa were a unified nation. With the establishment of the U.S. Canadian border in 1818, our independent sovereign nation was severed resulting in countless human rights violations amassed over the past two centuries. Essentially, as citizens of these foreign countries, our sovereign and aboriginal rights are not recognized and we are treated as immigrants and have become second class citizens in our own homelands!

Mr. Chairman, I respectfully appeal to your wise counsel to assist the Ktunaxa Nation in addressing this grave injustice. My people only recently began to speak English, my grandmother, the late Adeline Mathias uttered her first English word in 1918 and her parents had no use for English. Just as we were not properly represented in the 1855 Territory of Washington treaty negotiations, the Ktunaxa were not accorded civil or human rights in the taking of their homelands. With the political and geographic division of our peoples, we are severely disenfranchised and exploited in every way by all levels of government imposed on us.

Our nation has been decimated by foreign intervention and generations of Ktunaxa have suffered the consequences. My understanding of the UN Declaration on Indigenous Populations before you is that it calls for recognition of the rights of indigenous peoples. This includes the right to redress when lands, territories, or resources of Native nations have been taken without their informed consent. Mr. Chairman, based on all accounts, my ancestors were simply denied the opportunity to give their informed consent. Furthermore, it was impossible to render their consent due to the aforementioned language barrier.

A few weeks ago, you posed a question to the Tribal leaders who provided expert testimony at the Senate Committee hearing. I would like to respond to your inquiry of a proposed course of action to resolve my particular issue. I would like to develop a bilateral international agreement with the United States of America and Canada to set forth the principles of human rights through a uniform policy that recognizes and upholds the geopolitical jurisdiction of the Ktunaxa Nation. This international policy will lay out the procedures required to make our Nation whole again. Specifically, our nation state will be defined territorially so we are no longer considered immigrants in our own aboriginal lands. Then as the constructs of sovereignty dictate, our citizen's rights will be further validated through self-rule or self-governance whereby we will form a representative government to fully restore the Ktunaxa Nation. We must reclaim our independence to fully realize and exercise our aboriginal rights and civil liberties.

The Ktunaxa Nation comprised of all seven bands (Klitqat Wumlat, Yakannuki, Akinqumlasnuqli't, Aquam, Ksanka, Aqankmi, and Akisq'nuk) will then charter a course for our future with full recognition and the cooperation of both the United States of America and Canada. As a nation, we will embark on true self determination to serve as the true ambassadors of our homeland and continue our stewardship of the land while representing Ktunaxa interests. This will be a new beginning for my people who have suffered for the past 200 years as a fragmented Nation. Just as the African nations, the Arab Spring and the Maoris have exercised their sovereignty to free themselves from subjugation and foreign rule, we Ktunaxa would like the opportunity to formally organize ourselves back into the great Nation we once were prior to contact.

Chairman Akaka, I hope your powerful committee will accept this response as logical resolution to our immediate problems as indigenous peoples of North America. History proves that we cannot afford to delude ourselves with the false hope that foreign governments represent our interests. I personally believe that the answer to every single problem we encounter lies within ourselves as Kootenai people. Until the great Ktunaxa Nation is restored to exercise sovereignty to the fullest extent, we have no protections of indigenous rights as the first nation of these lands. Therefore, I urge the U.S. Senate Committee on Indian Affairs to revisit the fundamental rights of indigenous nations as you apply the proposed human rights protections.

Perhaps, we can form a subcommittee to advise on the restoration of severed nations as a starting point to adopting the UN Declaration before you. I believe the Ktunaxa stands prepared to manage their own affairs and we are ready and able to come to the table to resolve the jurisdictional issues associated with the US Canadian international border.

Mr. Chairman, let us take this Declaration of Human Rights for Indigenous Peoples and empower our indigenous nations to restore our inherent and sovereign rights. Now, my question back to you Chairman Akaka, will you stand with us?

Thank you for allowing this opportunity to express my concerns and to propose a solution for the Ktunaxa Nation of North America. Texas.

PREPARED STATEMENT OF VIVIAN AINOA, PRESIDENT, PAPA OLA LOKAHI

Aloha Senator Akaka and Honorable Members of the Senate Committee on Indian Affairs. My name is Mrs. Vivian Ainoa, president, Papa Ola Lokahi (POL), the Native Hawaiian Health Board. POL is recognized in federal legislation as the lead agency in addressing issues and concerns of Native Hawaiians nationally around health and wellbeing and has the responsibility of implementing federal policy as it relates to improving the health of Native Hawaiians to the "highest possible level."

My comments are brief. POL is in full support of the President's policy to review and support the UN Declaration on the Rights of Indigenous Peoples. Native Hawaiians are one of three major Indigenous Peoples in what are now states of the United States. This Declaration brings to the forefront the special relationship which we have with the United States. It will enable Native Hawaiians to finally engage in consultation discussions with the federal government and to hopefully be part of a federal infrastructure which fully recognizes Native Hawaiians on par with the other Indigenous Peoples of the United States. I have attached to my testimony today my initial comments to the US Department of State which describe in some detail why we feel this Declaration is so imperative to the health and wellbeing of Native Hawaiians. Thank you for holding this Oversight Hearing and we wish you, your staff, and all the Committee Members our on-going aloha and mahalo for your kokua.

Attachment

**Statement on the
United Nations Declaration on the Rights of Indigenous
Peoples**

to

The United States Department of State

July 12, 2010

Vivian Ainca, President

Aloha. Papa Ola Lokahi (POL) is the federally recognized Native Hawaiian Health Board under the Native Hawaiian Health Care Improvement Act (42 USC 11701 et seq) as the lead national Native Hawaiian NGO, addressing the health of the indigenous people of Hawaii. The indigenous people of Hawaii never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through plebiscite or referendum.

Papa Ola Lokahi recognizes the United Nations Declaration on the Rights of Indigenous Peoples and has adopted its tenants and its principles of self-determination and human rights. Papa Ola Lokahi firmly requests the United States to change its position, endorse the Declaration, and become a signatory to the Declaration so as to achieve full consensus on human and indigenous rights.

As noted in the United State's September 13, 2007, press release attempting to justify its non-support for the Declaration, the United States notes it was a supporter of this effort at its inception. It is unfortunate that United States unilateralism towards its indigenous peoples is one of the basic tenants of its foreign policy. Many, if not all, of the "observations" raised by the United States Mission to the United Nations in its press release are colored by this policy. This is in conflict as the United States was a founding member and signatory to the United Nations Charter which in Chapter IX directly referenced what more than fifty years later, it had issues with. This ambiguity is compounded by the fact that the United

States is already a signatory to the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the Vienna Declaration and Programme of Action. The United Nations Declaration on the Rights of Indigenous Peoples simply restates more finitely what has already been said in these international documents.

Of particular interest to POL are the references focusing on Indigenous Peoples' health and wellbeing in the Declaration. The intricate relationships between health and wellness, culture, spiritual beliefs and land are all intricate to Native Hawaiian health and wellness. Much of what is noted in the UN Declaration is already embodied in United States law as part of the Native Hawaiian Health Care Improvement Act (P.L. 111-148, 42 USC 11701 et seq, as amended). These include: The rights to preserving and protecting Native Hawaiian culture and self-determination; the rights to determine and establish their own health institutions which particular focus on "elders, women, youth, and children and persons with disabilities"; the right to their traditional medicines and to maintain their health practices"; and the right to maintain and strengthen their distinctive spiritual relationship with "their traditionally own lands, territories, waters and coastal seas and other resources."

The United States consistently disregards the human rights and the rights of the Indigenous people of Hawaii by systemically and categorically affording consultation to recognized tribes only, even though Congress has directed agencies to consult with Native Hawaiian NGOs under several laws affecting Native Hawaiians. Papa Ola Lokahi acknowledges that the Administration has reached out to federally recognized Tribes and has appointed a Policy Advisor on Native American Affairs; however it has not provided an express separate and distinct policy upholding the right of consultation for the indigenous peoples of Hawaii by Executive Order or Memorandum. The United States policy of affording consultation to some indigenous peoples and not other indigenous peoples makes its statements at the United Nations Permanent Forum on Indigenous Issues by the United States Delegate before the indigenous peoples of the world meaningless. Endorsement of the Declaration of the Rights of Indigenous Peoples and executing an Executive Order which affords consultation with federal agencies for all Indigenous peoples of the Native American continent, Alaska and the Pacific must be done to uphold human and Indigenous rights.

During the Durban Review Conference in April 2009, 182 States from all regions of the world reached consensus on an outcome document in which the *Welcomed the adoption of the UN Declaration on the rights of indigenous peoples which has a positive impact on the protection of victims and, in this context, urge[d] States to take all necessary measures to implement the rights of indigenous peoples in accordance with international human rights instruments*

without discrimination... (UN Office of the High Commissioner for Human Rights, *Outcome document of the Durban Review Conference*, 24 April 2009, para. 73).

Papa Ola Lokahi urges the President of the United States to uphold and rise with the world on human and indigenous rights and sign the United Nations Declaration on the Rights of Indigenous Peoples.

Thank you for the opportunity to comment on this critical moment in United States history.

PREPARED STATEMENT OF STACY DEACON, ADMINISTRATIVE ASSISTANT, ALASKA
NEWSPAPERS INC.

Dear Chairman Daniel K. Akaka and Members of the Committee:

Thank you for this opportunity to share my experience with discrimination in the State of Alaska. Our state is the highest in the nation in regards to discrimination against Indigenous People.

Since this is one of the topics at the hearing "eliminate discrimination". My request for the Committee is that my discrimination story is a key discussion point. There needs to be an end to discrimination against all people.

Most recently, my family and I were approved for housing, until the landlord had a series of inappropriate questions about our native heritage and we were ultimately denied a basic need for housing.

In which, I have published a story in the Rural Alaska Newspapers regarding this discrimination matter. Please see the attached story "Housing Discrimination Isn't Old History in Alaska" (Attachment A)

I appreciate your concern with discrimination in regards to Indigenous People.

Attachment A

OPINION: Housing discrimination isn't old history in Alaska



I wanted to share my personal experience with housing and the narrow-mindedness that is still occurring in Alaska today. Most recently, our family was in need of housing. We had been living with relatives for quite some time and we realized that our 3-year-old daughter needed her own bedroom and how I really wanted my own kitchen once again. So, we all decided to go out apartment searching and found a really nice two-bedroom apartment with a view of the Chugach Mountains.

We called the fellow who posted the "for rent" sign on the front of the property and scheduled a viewing of the apartment. The apartment had exactly what we were looking for: a dishwasher, nice living room size, balcony, nice bathroom and the laundry room right outside the front door. Although, it could have used some paint, new floor boards, thermostat and the kitchen really needed some scrubbing, but they were all minor fixes and we were definitely interested.

After some preliminary questions about employment and the standard questions about the permanent residents, the fellow asked if we wanted to go ahead and submit an application. In which case, we did and listed all of our information timely and honestly. He was still interested in our family and seemed like he wanted to rent to us. However, just like every other landlord, he and his wife had to process the application. Everything checked out with our employment and they called us with the go-ahead. During this phone call, we made an appointment for the lease signing. They advised us that we needed to have the electricity turned on in our names, have a couple of paycheck stubs ready and, of course, bring our state identification cards to the lease signing.

During this phone call, I also advised his wife that we would have to place a hold on the apartment with the security deposit and that we would have the entire rent with the next paycheck. I did not have the entire amount because I had to use my previous paycheck to go back to the village for a funeral. His wife seemed a little hesitant but said to meet with the husband anyway and to bring the requested documents.

I turned on the electricity the following day, already had our paycheck stubs, the deposit in hand and I was off to see the landlord to sign the lease. This is where the story takes an interesting turn. When I met with the landlord, he had some very troubling questions about our culture based on the earlier conversation I had with his wife.

He said, "I have some questions first off; what happens when you have to go back to the village?"

I said: "I would not be able to because I would need to pay the rent and that is my priority."

"Well I have rented to Native families before and they have always left me high and dry. When sometimes one of the family members goes back or the entire family goes back, I am left there stuck and I just don't think this is going to be a good fit, but I will talk it over with my wife, but she is a lot less understanding than I am."

Then he asked, "By the way, where did you meet your companion?"

I said, "Through a mutual friend."

He also continued with "Let's see, how old are you and how old is he?"

I gave him our ages. He also asked where he was from. I let him know he was from another small Native village. Even though, I didn't know the outcome, I recognized that look of disapproval.

At this point, I wanted to make sure we would have a roof over our heads, so I pleaded with him and said, "Please, sir, would you reconsider?"

He continued to the door and said, "We'll just go ahead and repost the for rent sign and if we don't get anybody by the thirtieth of the month, we'll go ahead and give it you."

Then we were outside of the building and he asked, "What village is your dad from?"

I said, "My dad is from Grayling."

After that, he asked, "Where is your mom from?"

I told him, "My mom is from North Dakota."

He asked, "Oh, what is her ethnicity or heritage?"

I said "She is Native American."

Then he said, "Oh, OK. We'll be in touch, then, and I'll let you know."

He called the same evening and said, "My wife and I said no! And you'll need to contact the electric company and see if they will reimburse you the electric deposit and if they don't, then I will."

I asked him, "Well, if you are not going to rent to me, even after we met all requested requirements; will you reimburse the electric deposit promptly?"

He said sharply, "I will get it to you when I do and that's tomorrow after 5 p.m. — goodbye!"

That same night, I was so devastated about not getting the place, after all we went through. I just cried. It wasn't until the next morning that I thought about the entire episode of not getting the place. Then I thought, "Did we just get discriminated

against?" Now, if you know me -- I am not one to use this word "discriminated" lightly. I tried to rationalize the entire situation over and over; it was just then, I realized that we were discriminated against.

I thought to myself, this can not be happening but if it is, I am going to do something about it. That's when I contacted a local state agency, gave them an overview and asked "Is this something you can help me with, or is it invalid?" The nice lady said, "Oh no, this is exactly the kind of cases we like to know about and this guy has to be stopped!" Just for a second, I felt like someone actually heard me. I continued with the case notes, dropped them off and we now have a current case pending. We shall see where it leads, but either way at least some light has been shed.

We continued to look for an apartment and luckily found an even better two-bedroom, not with a view, but better indeed. It has the much needed dishwasher, laundry room right outside the front door and an added bonus; nice lighting. It also has a small yard for our 3-year-old to play in. This is where we plan on having family time with barbecuing and sun-surfing. Now that we understand how difficult it is to find a nice place with good people, we plan on living there for a long time.

PREPARED STATEMENT OF HON. DENNIS L. MCDANIELS, ELDER CHIEF, MADESI BAND
OF THE PIT RIVER TRIBE

I would like to say, on the Rights of indigenous people, "We have a Right!"

I can't take my problems to the Bureau of Indian Affairs or the Pit River Council. So, I have no Right.

I don't know where to start with all of the violations. BIA, the Pit River Council, I don't like pointing fingers at any one. I would like to see an audit on the Pit River Council and use a world's leading investigative firm, like Kroll Associates, to look at its past business dealings under the duo. That would be a start. That way you could see what is wrong and fix it.

Thank you.

PREPARED STATEMENT OF MICAH MCCARTY, CHAIRMAN, MAKAH TRIBAL COUNCIL

Dear Chairman Akaka and Vice Chairman Barraso:

I write to you on behalf of the Makah Indian Tribe regarding the Committee on Indian Affairs' consideration of the domestic policy implications of the United Nations Declaration on the Rights of Indigenous Peoples. We strongly supported the Obama Administration's approval of the Declaration and were gratified to see United States' formal endorsement of this important document in December of last year. We also appreciate the opportunity provided by the Committee to include the Makah Tribe's views on how the United States can change domestic policy to faithfully implement the terms of the Declaration. We respectfully request that this letter be added to the record on this issue.

The Makah Tribe has lived on the northwestern-most tip of what is now the continental United States for thousands of years. The Tribe lived in harmony with its marine environment and enjoyed a thriving commercial maritime economy at the time of first contact with Europeans. Our subsistence, economy, culture, and ceremonies were -- and continue to be -- derived from the bounty of the sea and the deep forests of the Olympic Peninsula. When the Tribe ceded over 300,000 acres of land to the United States in 1855, our ancestors insisted that "the sea [was their] country" and that their "right to fish and take whales and get food where [they] liked" be preserved. The United States expressly agreed to these conditions. Its solemn promise is recorded in the 1855 Treaty of Neah Bay, which secures the Tribe's "right of taking fish, and of whaling or sealing at usual and accustomed grounds," as well as the right of hunting on open and unclaimed lands.

Despite the strength of the treaty as binding federal law, we find our traditional maritime culture and economy under siege on many fronts. After the de-listing of the Eastern North Pacific gray whale from the Endangered Species Act, the Tribe sought to resume its ceremonial and subsistence whale hunts. With the assistance of the United States, we secured a small subsistence quota to harvest gray whales from the International Whaling Commission (IWC) and

successfully harvested our first whale in over 70 years 1999. The hunt triggered a great cultural revival on our remote reservation.

However, a federal court subsequently held that, despite our express treaty right and the IWC quota, we must obtain a waiver from the take moratorium in the Marine Mammal Protection Act (MMPA) in order to continue hunting whales. The process for obtaining a waiver under the MMPA is extremely complicated. Although we submitted a request for a waiver in 2005, we have yet to receive a hearing on our request. Notably, the same waiver requirement is not imposed on Alaska Native harvests of whales or other marine mammals, or even on the incidental take of whales and other marine mammals in non-native commercial fisheries.

The requirement for the Makah Tribe to obtain a waiver under the MMPA and the process for obtaining a waiver should be reviewed in light of the U.N. Declaration, particularly Article 37's provision for the enforcement of treaties with indigenous people. It is clearly inconsistent with the Declaration to permit some native people and non-native commercial fisheries to take marine mammals without securing a waiver under the MMPA, while imposing the waiver requirement on the only tribe in the United States that has an express treaty right to take whales and seals. In addition, as long as the waiver requirement remains in place, the federal agencies implementing the MMPA should work with the Tribe to expeditiously complete the waiver process in a manner that upholds the federal government's trust responsibility to the Tribe and the legal rights secured under the Treaty, as contemplated by the U.N. Declaration.

We also face multiple threats to our treaty fishing rights. For example, the National Oceanic and Atmospheric Administration's Office of National Marine Sanctuaries (ONMS), which oversees the Olympic Coast National Marine Sanctuary (OCNMS) and other national marine sanctuaries, is seeking greater regulatory authority over fisheries, including the Tribe's commercial, ceremonial and subsistence fisheries. This is of particular concern because our treaty fishing rights are confined to our "usual and accustomed fishing grounds and stations," and the Sanctuary includes a large portion of these traditional fishing grounds. Unfortunately, the ONMS has been pushing for greater regulatory control over fishing in sanctuaries nationwide and has disregarded the unique legal obligations of the United States to the Makah and other treaty tribes in the OCNMS. This too is inconsistent with the policies expressed in the U.N. Declaration.

Another issue of fundamental importance to the Tribe concerns our most important and productive traditional fishing grounds. Those grounds lie some 10 to 20 miles northwest of our reservation in waters off the coast of Vancouver Island and were a particularly productive location for the Tribe's Pacific halibut fishery, its most important treaty-time fishery. In the landmark Northwest treaty fishing rights litigation, the federal courts found that these grounds were a part of the Makah Tribe's treaty-time fishing grounds, that is, they are fishing grounds in which the United States expressly promised to secure the Tribe's right to take fish. However, in 1976 Canada asserted fisheries jurisdiction over these waters and in 1979 the United States and Canada ended reciprocal fishing privileges for Pacific halibut in each other's waters. Ever since then, the Tribe has been unable to access these fishing grounds for its most important treaty-time fishery. The Tribe has sought the assistance of the United States in addressing this situation, and the U.N. Declaration now provides a strong foundation for the provision of such assistance.

We recognize that the U.N. Declaration is not a self-executing treaty with the full force of law. However, it constitutes the world's most comprehensive statement of the rights all Indigenous Peoples—individually and collectively—should possess, and articulates the standards that countries should strive to attain to ensure that our rights are protected. As a signatory to the Declaration, the United States should work with and in support of the Makah Tribe as we fight for our treaty rights on a daily basis, seeking to ensure a future that retains the way of life our ancestors secured for us with the treaty guarantees.

PREPARED STATEMENT OF THE HAUDENOSAUNEE CONFEDERACY, ONONDAGA NATION

Chairman Akaka and members of the Committee:

The Haudenosaunee sends greetings to the United States Senate Committee on Indian Affairs. We express our gratitude for the Committee's effort to review the UN Declaration on the Rights of Indigenous Peoples and its possible implications within the United States legal and political regimes.

The Haudenosaunee, sometimes called the Six Nations Confederacy, has been in existence in North America for countless generations and we send to you our wishes for peace and friendship as we also did with your founding fathers over 200 years ago. We are comprised of individual nations; the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora nations and reside on territories located primarily in northeast United States and southeast Canada.

This Statement is being submitted in the spirit of "polishing the covenant chain", within the history of our treaty relationships, as we have a longstanding treaty relationship with the United States formalized in both the 1784 Treaty of Fort Stanwix, the 1789 Treaty of Fort Harmor and the 1794 Treaty of Canandaigua. These treaties confirm the Haudenosaunee legal and political status with the United States but more importantly, established peace and friendship that commits both parties to policies of mutual respect. This practice of each nation respecting the sovereignty and the rights of the other was also memorialized in 1615, in the Two Row Wampum belt, the first treaty agreement between the Haudenosaunee and several European nations and later the United States.

For over thirty years, the Haudenosaunee have been active participants in the development of international standards that recognize the rights of Indigenous Peoples. Our leadership realized many years ago that federal laws and policies, both in the United States and Canada, did not treat native peoples or nations with the same fairness and equality as other peoples. In fact, we saw an openly hostile attitude with respect to our rights in most venues and came to realize that the International arena was the best method for pursuit of these vitally important matters. So in 1977 we sent a delegation of Chiefs, Clanmothers and others to the United Nations in Geneva, Switzerland to begin the quest for equality of rights for all Indigenous Peoples in the world.

Over the next several decades our delegations were consistent in the work

within the United Nations structure at establishing standards for the recognition of rights for our peoples. The Haudenosaunee were the first Indigenous Peoples to respond to the Declaration of Action that was issued by the 1992 Rio Summit, when the Haudenosaunee Environmental Task Force was formed to work on environmental issues within our territories and internationally, around the world. Finally, on September 13, 2007, we were present at the United Nations in New York when the Declaration was adopted by the UN General Assembly. We were extremely disappointed when the United States was one of only four States who voted against the adoption of the Declaration.

Treaty making is an important dimension of the right to self-determination and the Declaration provides a legal framework for interpreting treaty rights and treaty violations, as well as redress, restitution and compensation. Additionally, consent and the good faith of all parties are essential elements in treaty making. The Declaration reinforced the status of Indigenous Peoples who have a legal personality, rights and duties, and a recognized status and capacity in the international context; this is not solely reserved for States. The right of Indigenous Peoples to an effective remedy for treaty violations should therefore, not be limited to domestic forums.

As you know, the importance of treaties is fundamentally recognized in the United State Constitution, Article VI, Clause, which mandates that "treaties are the supreme law of the land."

While we were somewhat encouraged when the United States became

the last nation to drop its opposition to the UNDRIP in December 2010, we remain disappointed with the continued lack of full endorsement, without reservation, of the Declaration by the United States. Before the President's formal announcement of support for the Declaration, we continued to keep pressure on the United States Department of State as well as the newly elected President Barack Obama to reverse its decision, and to formally endorse the Declaration. This resulted with the announcement by the President on December 16, 2010 that the United States would now fully support the United Nations Declaration on the Rights of Indigenous Peoples, but with reservations. We would respectfully bring to your attention that Declarations are universally applicable upon their adoption and State cannot pick and choose which human rights they are prepared to support.

Background and overview of the Declaration:

The Declaration affirms Indigenous Peoples as peoples with the right to self-determination and the right to the full enjoyment, as a collective and as individuals of all human rights and fundamental freedoms as recognized in the United Nations Charter, the Universal Declaration of Human Rights and international human rights law. We would further note that all human rights are universal, indivisible, interdependent and interrelated.

Any claim that the Declaration is not a legally binding instrument but in fact is only an aspirational document whose force is moral or political rather than legal, is ill-founded and incorrect. It is now an official statement by member

States of the United Nations that these are the legal rights of Indigenous Peoples in international law, with considerable political force as well.

When the United Nation Charter was adopted in 1945, it consistently maintained a clear and clear balance between the principles of the self-determination of peoples and the territorial integrity of States. The 1970 Declaration of Friendly Relations made that clear and is accepted international law. Article 46 of the United Nations Declaration on the Rights of Indigenous Peoples upsets this balance by highlighting only the second principle (the territorial integrity of the States) by placing the duty to respect the territorial integrity of States on peoples, in particular Indigenous Peoples. This is the first time that this approach has been advanced in international law. The principle of territorial integrity is between States only, not Peoples.

Another point that we would call to your attention, for your consideration and understanding is that Preambular paragraph 16 in the Declaration makes reference to the 1993 Vienna Declaration and Programme of Action (which is not considered legally binding), did not recognize our status as peoples, but designated us as minorities. This is an important point, but one that is rarely mentioned.

Lastly, Article 30 which concerns military activity on our territories, states that such intrusive activity cannot be justified by a "relevant public interest" criteria, as opposed to a "significant threat to a relevant public interest", which was the original language agreed upon by the Indigenous Peoples Caucus,

but which was watered down during the last days of negotiations. To be clear here: Indigenous Peoples were not part of the negotiations once the Declaration reached New York City we were outside the negotiation process, but strongly lobbied our positions. Unfortunately, there were Indigenous Peoples who agreed to the watering down of the language, with States in agreement. This capitulation did not represent the consensus position of Indigenous Peoples globally. United States' domestic law needs to be corrected to comply with the Declaration:

Now let us discuss some of the possible avenues that the United States could travel to fully implement provisions of this Declaration for the Indigenous Nations and peoples within the continent. Some examples where improvements in laws or policies have occurred are areas dealing with graves protection, environmental justice, and health and educational opportunities. But there are so many more arenas that require completely revamped methods to deal with the issues.

As stated in a report to the United Nations General Assembly in 2004 by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples: "Indigenous peoples bear a disproportionate share of the social and human costs of resource-intensive and resource-extractive industries, large dams and other infrastructure projects, logging and plantations, bio-prospecting, industrial fishing and farming, and also eco-tourism and imposed conservation projects." To address this inequity, the Declaration sets forth best practices that States should implement consistent with the

principles of equality and diversity. The Declaration enshrines our right to be different as peoples and affirms minimum standards for our survival and well being. It also promotes human rights through its emphasis on inherent collective rights and individual rights which include treaty right, the right to our lands and resources and the right to self-determination.

This Statement will address three main areas of concerns wherein the domestic law of the United States must be changed to bring it into accord with International Law and the UNDRIP:

1. Treaty rights and the protection of our homeland and sacred sites;
2. Exploitive mineral, oil and gas extraction and mining on our lands;
3. Our right to economic, social, cultural and political development and to develop our economies free of interference and taxation by the United States and its individual states.

Treaty Rights and Protection of our Homelands:

As noted above, the Haudenosaunee hold three (3) treaties with the United State government, and the most recent of which was the 1794 Treaty of Canandaigua. This Treaty, among other matters, guaranteed each of our Nations certain defined areas of our aboriginal homelands, which were acknowledged by the United States: "to be [our] property", never to be claimed by the United States, and we were guaranteed "the free use and enjoyment" of these recognized homelands. Unfortunately, the United State stood by passively

as the state of New York continually violated our Treaties, the Constitution of the United States and specific federal laws, by illegally taking our land in the 1790s and early 1800s.

After centuries of being systematically excluded from the United State Courts, our Nations filed land rights actions in the latter part of the 20th century. Recently, we have experienced the federal courts dismissing our land rights cases, based upon unfair and completely discriminatory theories of law, which are founded upon the doctrine of discovery. This racist and Euro-centric body of medieval law must be eliminated from United States Indian Law, so that we can exercise our treaty rights to our land and resources as well as other rights expressed in the Declaration.

Exploitive mineral, oil and gas extraction and mining on our lands:

While the aboriginal homelands of the Haudenosaunee have been subjected to exploitive mining and extraction for centuries, against our will and without our free, prior and informed consent, our lands and waters are now faced with an extremely dangerous method of gas extraction know as high-volume, slick water, horizontal, hydraulic fracturing, or fracking. This method of gas mining uses huge volume of fresh water and turns it into radioactive and toxic waste. It also creates massive air pollution and ozone problems, and it will destroy hundreds of thousands of acres of forests. The lack of consultation or our free prior, and informed consent to this practice must be stopped.

The access to our lands for mineral and other resource extraction and development has been one of the forces behind the illegal expropriation of our lands. Moreover, industry's pressure on us for our resources has been generally devastating. Therefore, the principle of free, prior and informed consent is a pre-requisite for the exercise of our right to self-determination, as defined in international law. It underpins our ability to exert sovereignty over our lands, natural resources and to redress violations by the States.

The Declaration includes a number of provisions affirming our right to free, prior and informed consent as well as related State obligations. The United Nations General Assembly's Programme of Action for the Second International Decade of the World's Indigenous Peoples also addresses the importance of free, prior and informed consent. One of the five objectives of the Second Decade is "promoting full and effective participation of indigenous peoples in decision which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent."

Our right to develop our economies free of interference and taxation by the United States and its individual states:

The Declaration can be used to measure how member States are behaving towards us on our home territories. As affirmed by experts at a 2003 United Nations Seminar on Treaties: "The failure of states to respect this

fundamental principle [free, prior and informed consent] is a primary cause for treaty violations, abrogations and results in a broad range of human rights violations." Now is the time for our Nations to take control of our resources, conduct our own negotiations and come to the best decisions possible for our people under the principle of free, prior and informed consent. We will continue to create and refine the institutions that allow us to come together in partnership and collectively continue to launch new initiatives to solve old problems. We will continue to assert our inherent rights.

Over the past 30 years, our territories have developed economic self-sufficiency and activities that have sustained our people with jobs and a steady source of income to our governments, based upon the sale of tobacco products, while also contributing to the financial health of the local towns that surround us. Recently, United States courts have allowed the State of New York to interfere with these economies, in direct violation of our right to freely pursue our economic, social and cultural development and to attempt to place the state taxes on these sales. Such taxation is in clear violation of our Treaty rights and violates our sovereignty. This state taxation of our economies must be halted and our treaty rights must be honored.

Further, any taxation of our economies is specifically forbidden by the United State Constitution, Article I, Section 2, Clause 3 and the Fourteenth Amendment of 1868, which both specifically state the "Indians [are] not taxed."

Another aspect that requires immediate attention is the body of Indian law

that is discriminatory and in fact, unconstitutional. Nearly all of the body of law that relates to lands, territories and natural resources are not consistent with the US Constitution and are completely unworkable on the scale for Indian country.

Some of these include, but are not limited to are:

US trust title to Indian lands;

taking of Indian lands without redress and just compensation or

other provisions of due process;

Treaty violations;

Plenary power doctrine;

Native ownership of aboriginal lands;

Interference with internal governmental affairs with Indian governments;

As well as many other unjust doctrines developed through US Supreme Court rulings.

Conclusion:

The Haudenosaunee call upon this Committee and all branches of the United States government to honor our treaty rights, protect our aboriginal lands and to begin an open process for the redress of our rights. We also call upon the United States government to amend its domestic laws and policies to eliminate the doctrine of discovery, to stop the exploitation of our land, resources and waters via dangerous mining and gas extraction methods and to end the practice of local state taxation of our economies.

Da•ne'toh,

Tadodaho Sidney L. Hill

PREPARED STATEMENT OF TAVIS SANDERS (REDTAIL HAWK THUNDERBIRD), CO-FOUNDER OF INDEED

The black population in the United States share a unique yet omitted history which spans thousands of years in North America. This unique history at present date has been lost even to the indigenous people to whom it relates.

The story of the brown skinned people in the United States did not begin with the African slave trade as many believe; rather it began in ancient times with a people, who eventually over time, became known as The Mound Builders. These dark to light skinned indigenous people of North America built various styles of mounds made of dirt for burial, ceremonial and religious purposes. The last of the Mound Building eras, which was called the Mississippian Era, has been attributed to ending during the time of colonial settlement—around 1700.

Many of these indigenous peoples, because of slavery, laws being created, and policies being implemented, were stripped of their identity and culture and reclassified as Black. In recent times we, the indigenous people of the United States, have once again begun to rise up and invest in the promotion of our history and culture.

However, we face the daunting task of not only hurdles of the legal and political processes, we also endure an on going and basic disregard of our very existence. To quote the words of President Obama on May 19th, 2011, “How can one negotiate with a party that has shown itself unwilling to recognize your right to exist?”

We hope that the United States Senate Committee will give the recommendation to acknowledge, respect and hold these fundamental principals for all the Indigenous communities, here in the United States and around the world.

Thank you

Alutia Tribal Council
P.O. Box 70
Alutia, Alaska 99720

June 9, 2011

Honorable Daniel K. Akaka
Chairman, Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Mr. Chairman:

The Native Village of Alutia applauds the Senate Committee on Indian Affairs for considering the domestic policy implications of the UN Declaration on the Rights of Indigenous Peoples. While the United States' endorsement of the Declaration was a good first step in recognizing the rights of indigenous peoples, it will be meaningless unless followed by actual changes in the law to recognize and protect these rights.

As Native peoples, we are often asked why the endorsement of the Declaration by the United States is important. Why should the U.S. government reform its policy towards indigenous peoples in line with the Declaration? The answer is simple, yet important.

The United States' endorsement of the Declaration provides hope that the general laws of the United States, many of which are mirrored in the language of the Declaration, will be honored and respected for all citizens of the United States, including Native peoples. It is our expectation that the endorsement will lead to increased respect by federal and state policy makers for the cultures and territories of Native nations, and for our right to make our own decisions regarding issues that affect us. We urge you to use the principles in the Declaration as a guide to improve the laws and policies impacting Native individuals and nations and the government-to-government relationship.

The Declaration also sets an agenda for the United States and Native nations to design a reasonable and progressive approach for realizing all is a yard stick to evaluate how existing and proposed federal laws and policies measure up to the standards of the Declaration. Does a law or bill meet the standards of the Declaration? It should and, if it doesn't then the law or bill should be changed or discarded.

For example, under the Declaration, countries should protect indigenous women against all forms of violence and discrimination. Native women are more than twice as likely to be victims of violence, in large part because tribes lack the jurisdictional authority to prosecute outsiders. Changing federal laws and policies to allow tribal governments to police and prosecute violent crimes in their communities adequately would have a tremendous impact on Native women of the United States.

The Native Village of Alutia particularly wants changes in federal laws and policies regarding rights of indigenous peoples concerns of our lands, territories, and resources of Native nations. To strengthen access to federal courts for Indian and Alaska Native nations. Judicial requirements make it impossible or at best burdensome for indigenous peoples to obtain any real justice in the federal courts. Access to federal courts for wrongs related to our Native lands and resources continues to be very problematic. Consultations between Native nations and the federal government is needed to address the lack of a statutory right to sue in the federal courts to protect these rights.

Simply put, U.S. endorsement of the Declaration acknowledges that our rights matter, and gives us greater confidence that the United States will finally recognize and address the concerns of

Native peoples. Please take affirmative steps to make the UN Declaration an integral part of the United States' commitment to bring real and lasting change for the Native nations of this country.

Thank you,

Sincerely,

Peter David 2nd Chief

**Peter David
First Chief
Native Village of Alutna**



LaDonna Harris, Comanche
Founder & President

Eddie Tillis, Poarch Creek
Vice President

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LeeAnn Sperling, Maori

Terry Tanner,
Salish/Kootenai Nation

James Washinawatil,
Monominee/Mewesasne Mohawk

Judy Winchester,
Pelagton Band Potawatomi

June 7, 2011

Hon. Daniel Kahikina Akaka
Chairman, U.S. Senate Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510-0001

Dear Chairman Akaka:

The Board of Directors of Americans for Indian Opportunity (AIO) and I congratulate you and the Senate Indian Affairs Committee for organizing the June 9 Oversight Hearing on the Domestic Policy Implications of the UN Declaration on the Rights of Indigenous Peoples.

The U.S. is long overdue in signing the Declaration, and hopefully this Hearing will clear up some of the concerns preventing unequivocal support of the Declaration.

We applaud your efforts and we want to know how we can be of assistance. If there are future hearings on the Declaration, perhaps, for instance, we at AIO could have some input into the development of the agenda. Over the past 20 years, AIO's main focus has been on Indigenous leadership development through our Ambassadors Program. More than 200 Native Americans, ages 25-35, representing over 100 Tribes from 40 States have participated in this Program. We also have a well-established sister Maori Program in New Zealand, the beginnings of an Ainu Program in Japan, and we hope that our work will be of use to our Brothers and Sisters in Latin America and elsewhere on the Pacific Rim.

Americans for Indian Opportunity strongly supports the U.S. endorsement of the Declaration. Please let me know how AIO and I can help clear up misconceptions and overcome the obstacles that prevent the U.S. from signing the UN Declaration on the Rights of Indigenous Peoples.

Warmest regards,

LaDonna Harris
Founder and Chairman of the Board
Americans for Indian Opportunity (AIO)