***UN Declaration on the Rights of Indigenous Peoples***

**Examples of Legislation and Litigation**

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**Jennifer Preston and Paul Joffe**

**Introduction**

This document includes examples of:

* Legislation in Canada that includes the *UN Declaration on the Rights of Indigenous Peoples*;
* Litigation in Canada that uses the *UN Declaration*;
* International examples of *UN Declaration* implementation.

The document is not a complete listing of these topics. It provides a sense of the broad scope of how the *Declaratio*n is building traction both domestically and internationally. Work on a national action plan should include review of and build upon such examples. It should also include examples of existing implementation actions at the community level.

**Legislation in Canada that includes the *UN Declaration***

**Federal**

**9 federal Acts currently include the *UN Declaration***

These include:

* *Department of Indigenous Services Act*
* *Department of Crown-Indigenous Relations and Northern Affairs Act*
* *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur general)*
* *An Act respecting Indigenous Languages*
* [*An Act respecting First Nations, Inuit and Métis children, youth and families*](https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10344307)
* *First Nations Land Management Act*
* *An Act to establish the Department for Women and Gender Equality*
* *Impact Assessment Act*
* *Canadian Energy Regulator Act*

*Budget Implementation Act, 2019, No. 1*, S.C. 2019, c. 29:

Enactment of Act

336 The *Department of Indigenous Services Act* is enacted as follows:

An Act respecting the Department of Indigenous Services

Preamble

Whereas the Government of Canada is committed to

achieving reconciliation with First Nations, the Métis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition and implementation of rights, respect, cooperation and partnership, promoting respect for the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and implementing the **United Nations Declaration on the Rights of Indigenous Peoples**;

337 The *Department of Crown-Indigenous Relations and Northern Affairs Act* is enacted as follows:

An Act respecting the Department of Crown-Indigenous Relations and Northern Affairs

Preamble

Whereas the Government of Canada is committed to achieving reconciliation with First Nations, the Métis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition and implementation of rights, respect, cooperation and partnership, promoting respect for the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and implementing the **United Nations Declaration on the Rights of Indigenous Peoples**;

*An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, S.C. 2017, c. 25 (assent, December 12, 2017):

Consultations and Reports

Consultations by Minister

11 (1) The Minister must, within six months after the day on which this Act receives royal assent, initiate consultations with First Nations and other interested parties in order to address, in collaboration with those First Nations and other parties, issues raised by the provisions of the [Indian Act](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-i-5/latest/rsc-1985-c-i-5.html) related to registration and band membership, including consultations on

* + (a) issues relating to adoption;
  + (b) the 1951 cut-off date for entitlement to registration;
  + (c) the second-generation cut-off rule;
  + (d) unknown or unstated paternity;
  + (e) enfranchisement;
  + (f) the continued federal government role in determining Indian status and band membership; and
  + (g) First Nations’ authorities to determine band membership.

• Requirement

(2) The Minister, the First Nations and the other interested parties must, during the consultations, **consider the impact** of the [Canadian Charter of Rights and Freedoms](https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html), of the **United Nations Declaration on the Rights of Indigenous Peoples** and, if applicable, of the [Canadian Human Rights Act](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html), in regard to those issues.

*Indigenous Languages Act*, S.C. 2019, c. 23, preamble:

Whereas the Government of Canada is **committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples**, which affirms **rights related to Indigenous languages**;

…

Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government;

…

Whereas Indigenous languages are fundamental to the identities, cultures, spirituality, relationships to the land, world views and self-determination of Indigenous peoples;

And at s. 5:

**5**The purposes of this Act are to:

…

**(g) contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples** as it relates to Indigenous languages.

[*An Act respecting First Nations, Inuit and Métis children, youth and families*](https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10344307), S.C. 2019, c. 24, preamble:

Whereas the Government of Canada is **committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples**;

…

Whereas Parliament affirms the right to self-determination of Indigenous peoples, including the inherent right of self-government, which includes jurisdiction in relation to child and family services;

And at s. 8:

The purpose of this Act is to

…

**(c) contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples**.

*Department for Women and Gender Equality Act*, enacted in *Budget Administration Act, 2018, No. 2*, S.C. 2018, c. 27, at s. 661, preamble

“Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples”;

Amendment to preamble of *First Nations Land Management Act* enacted in *Budget Administration Act, 2018, supra*

“And whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples”;

*Impact Assessment Act*, S.C. 2019, c.28 preamble; and *Canadian Energy Regulator Act*, S.C. 2019 c.28, preamble

“Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples”;

“Whereas the Government of Canada is committed to achieving reconciliation with First Nations, the Métis and the Inuit through … relationships based on recognition of rights, respect, co-operation and partnership”;

**British Columbia**

*Environmental Assessment Act*, S.B.C. 2018, c. 51, s. 2(2)

(b) The purposes of the [Environmental Assessment O]ffice are

…

(ii) support reconciliation with Indigenous peoples in British Columbia by

(A) supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples,

(B) recognizing the inherent jurisdiction of Indigenous nations and their right to participate in decision making in matters that would affect their rights, through representatives chosen by themselves,

(C) collaborating with Indigenous nations in relation to reviewable projects, consistent with the United Nations Declarationon the Rights of Indigenous Peoples

*Poverty Reduction Strategy Act*, S.B.C. 2018, c. 40, s. 4

Commitment to Indigenous peoples

The strategy must reflect a commitment to

(a) reconciliation with Indigenous peoples,

(b) the Calls to Action of the Truth and Reconciliation Commission, and

(c) the United Nations Declaration on the Rights of Indigenous Peoples.

**Manitoba**

*The Path to Reconciliation Act*, S.M. 2016, c. 5 (assented to March 15, 2016), s. 4

The minister responsible for reconciliation must guide the development of a strategy for reconciliation that

(a) is to be guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples;

…

**Excerpts from litigation using the *UN Declaration***

The *UN Declaration* can be used by domestic courts in Canada to interpret Indigenous peoples’ rights and related Crown obligations in Canada’s Constitution, including section 35 of the *Constitution Act, 1982*.

See generally *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313, at 348 (Dickson C.J. dissenting; cited with approval in *United States of America* v. *Burns*, [2001] 1 S.C.R. 283, para. 80):

The various sources of international human rights law declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms - must, in my opinion, be relevant and persuasive sources for interpretation of the [Canadian] Charter's provisions.

If international declarations can be used to interpret human rights in the *Canadian Charter* in Part I of the *Constitution Act, 1982*, then the same rule must apply to Indigenous peoples’ human rights in section 35 (Part II). There must be no discriminatory double standard.

The *UN Declaration* has been used in many domestic cases, and unfortunately there are several examples where it has not been used well or the reference to it in the decision is confusing. This speaks to the need for further legal training for both lawyers and the judiciary.

Below are some useful examples of litigation, some with key excerpts.

*Pastion* v. *Dene Tha’ First Nation*, 2018 FC 648:

[10] … The Truth and Reconciliation Commission of Canada pointed out that the recognition of Indigenous peoples’ power to make laws is central to reconciliation (Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015) at 202-207). And the United Nations’ Declaration on the Rights of Indigenous Peoples (UN GA Res 61/295, 61st Sess, Supp No 53 (2007)) echoes these aspirations in 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.

*First Nations Child and Family Caring Society of Canada (FNCFCS) et al.* v. *Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada (INAC))*, 2018 CHRT 4, <https://fncaringsociety.com/sites/default/files/2018%20CHRT%204.pdf>:

International Law

[69] The *CHRA* is a result of the implementation of international human rights principles in domestic law (see the *Decision* at paras 437-439).

[72] Of particular significance especially in this case is the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), GA Res. 61/295, UN GAOR, 61st Sess., Supp. No 49 Vol III, UN Doc A/61/49 (2007) (the UNDRIP). It outlines the individual and collective rights of Indigenous peoples. In May 2016, Canada endorsed the UNDRIP stating that “Canada is now a full supporter of the Declaration, without qualification.

[73] UNDRIP Articles 3, 4, 5, 14, 15, 18, 21 support the rights of equal and just services and programs for Indigenous, with consultation on their social, economic and political institutions.

[74] UNDRIP Articles 7, 21 (2), 22 (1) (2), state that Indigenous peoples have the right to live in freedom and shall not be subject to violence including the forceful removal of their children; that Indigenous people have the right to the improvement of their economic and social conditions; and states will take measures to improve and pay special attention to the rights and special needs of children.

[75] UNDRIP Articles (Article 2, 7, 22) relate directly to the protection of Indigenous children and their right to be free from any kind of discrimination.

[76] Article 8 of UNDRIP reminds governments of their responsibility to ensure that forced assimilation does not occur and that effective mechanisms are put into place to prevent depriving Indigenous peoples of their cultural identities and distinctive traits, disposing them of their lands, territories or resources, population transfer which violates or undermines Indigenous rights, forced assimilation or integration, and discriminatory propaganda.

[77] In addition, in 2015, Canada has accepted to fully implement the 94 Truth and Reconciliation calls for action. Child welfare and Jordan’s Principle are the numbers 1 to 5 calls to action.

[78] The TRC Calls to Action 8, 10, 11, and 12 ask the government to eliminate the discrepancy in federal funding for First Nations, while Calls to Action 18 and 19 call upon the government to address the current state of Aboriginal health and to establish goals to close the gaps.

[79] The TRC calls for cooperation and coordination between all levels of government and civil society to implement its calls to action, and for government to fully adopt and implement the UNDRIP as the framework for reconciliation.

[80] Canada recognized the need to renew the Nation-to-Nation relationship with Indigenous communities.

[81] Furthermore, the Panel believes that national legislation such as the *CHRA* must be interpreted so as to be harmonious with Canada’s commitments expressed in international law including the UNDRIP.

Conclusion

[451] It is important to look at this case in terms of bringing Justice and not simply the Law, especially with reconciliation as a goal. This country needs healing and reconciliation and the starting point is the children and respecting their rights. If this is not understood in a meaningful way, in the sense that it leads to real and measurable change, then, the TRC and this Panel’s work is trivialized and unfortunately the suffering is born by vulnerable children.

# *R.* v. *Sayers*, 2017 ONCJ 77:

50 Articles 3, 8(2)(b), 26, 28, 32 and 40, of the United Nations Declaration of the Rights of Indigenous Peoples, would appear to have significance within the context of these proceedings. Those provisions are set out below: *(the decision then re-produces all those articles from the Declaration).*

51 In addition to the articles of the UN Declaration as set out above, another recent significant development of aboriginal rights in this country was signaled by the release of the report of the Truth and Reconciliation Commission of Canada in 2015. The summary of the final report of the Commission contains a number of "calls to action". The recommendations, or "calls to action" which are most relevant in the context of this case, include those calls to action set out in paragraphs 42, 45, 46, 52 and 92(i) and (ii) of that report which are reproduced below: *(the decision then re-produces all those Calls to Actions).*

53 The court makes the following observations:

The Crown is a special party in these proceedings and other prosecutorial proceedings. Its role is not about winning or losing cases but to ensure that justice is done. The Crown is not an ordinary litigant but has a high public duty (see comments Sopinka J. *R. v. Stinchcombe,* (1991), 68 C.C.C. (3d) (S.C.C.).

In addition, in dealing with aboriginal people and aboriginal land claims and rights, the Crown has a special responsibility and relationship with its indigenous peoples.

The Crown must deal with such peoples and related issues fairly and appropriately, especially in light of the recent recommendations as released by the Truth and Reconciliation Commission and Canada's recent adoption of the United Nations Declaration of the Rights of Indigenous Peoples.

67 In fact, this court finds that the withdrawal of these charges is consistent with the UN Declaration of the Rights of Indigenous Peoples and is consistent with the calls to action as enunciated in the Summary of the Final Report of the TRCC.

74 Such negotiations should proceed in the absence of outstanding charges under the *Provincial Offences Act.* The threat of criminal sanctions should be replaced with negotiation by both the federal and provincial governments with BFN and other interested parties. In the language of the calls to action in paragraph 45 of the Truth and Reconciliation Commission, and as suggested by counsel for the BFN defendants, this process should:

1. "reaffirm the nation-to-nation relationship between aboriginal peoples and the Crown."

113 The Crown in this case indicates that there was a reasonable prospect of conviction, but elected not to proceed with the prosecution for public policy reasons. One of the reasons suggested for that decision was that this was not the most appropriate forum to deal with the issues of aboriginal claims. I agree. The case law in *Marshall*, supra, however, predated this prosecution. As indicated in my reasons relating to granting the Crown leave to withdraw the charges, recent developments including the ratification by Canada of the UN Declaration of the Rights of Aboriginal Peoples and the release of recommendations of the Truth and Reconciliation Commission have provided greater impetus for discussions between the Crown and First Nations in resolving their disputes rather than resorting to criminal actions.

*Catholic Children's Aid Society of Hamilton* v. *G.H.*, 2016 ONSC 6287:

66 …The Crown also highlighted that a cornerstone of its commitment to achieving reconciliation between Aboriginal and non-Aboriginal Canadians was the establishment of the Indian Residential Schools Truth and Reconciliation Commission. In 2010, the federal government took another important step in implementing the promise to pursue reconciliation by signing the United Nations *Declaration on the Rights of Indigenous Peoples*. In May 2016, the government announced that Canada is now a full supporter, without qualification, of this international Declaration.

# *First Nations Child and Family Caring Society of Canada* v. *Canada (Attorney General)*, 2016 CHRT 2:

452 Finally, the *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, UN GAOR, 61st Sess., Supp. No 49 Vol III, UN Doc A/61/49 (2007) (the *UNDRIP*), which was adopted by the United Nations General Assembly on September 13, 2007, was endorsed by Canada on November 12, 2010. Article 2 provides that 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 rights based on their indigenous origin or identity. Although this international instrument is, at the time being, a declaration and not a treaty or a covenant, and is not legally binding except to the extent that some of its provisions reflect customary international law, when Canada endorsed it, it reaffirmed its commitment to "...improve the well-being of Aboriginal Canadians"(*Canada's Statement of Support on the United Nations* *Declaration on the Rights of Indigenous Peoples*, November 12, 2010, online: Indigenous and Northern Affairs Canada <http://www.aadnc-aandc.gc.ca>).

453 The international instruments and treaty monitoring bodies referred to above view equality to be substantive and not merely formal. Consequently, they consider that specific measures, including of a budgetary nature, are often required in order to achieve substantive equality. These international legal instruments also reinforce the need for due attention to be paid to the unique situation and needs of children and First Nations people, especially the combination of those two vulnerable groups: First Nations children.

454 The concerns expressed by international monitoring bodies mirror many of the issues raised in this Complaint. The declarations made by Canada in its periodic reports to the various monitoring bodies clearly show that the federal government is aware of the steps to be taken domestically to address these issues. Canada's statements and commitments, whether expressed on the international scene or at the national level, should not be allowed to remain empty rhetoric.

455 Substantive equality and Canada's international obligations require that First Nations children on-reserve be provided child and family services of comparable quality and accessibility as those provided to all Canadians off-reserve, including that they be sufficiently funded to meet the real needs of First Nations children and families and do not perpetuate historical disadvantage.

# *Nunatukavut Community Council Inc.* v. *Canada (Attorney General)*, 2015 FC 981, para. 96:

96 The NCC also submitted that the Minister's duty to consult and accommodate should be read in light of the *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st Sess., Supp. No. 49 Vol. III, UN Doc. A/61/49 (2007) ("UNDRIP"), which Canada endorsed on November 12, 2010. Values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review (*Baker* at para 70) and, although not binding, international law informs the interpretation of domestic law pursuant to the presumption of conformity (*R v Hape*, 2007 SCC 26 at paras 53-55). The Supreme Court has relied on UNDRIP to interpret Aboriginal rights (*Mitchell v Minister of National Revenue*, 2001 SCC 33 at paras 80-83 [*Mitchell*]) and, since its endorsement, this Court has accepted that UNDRIP applies to the interpretation of domestic human rights legislation and the interpretation of administrative manuals directed at Aboriginal peoples (*Canada (Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445 at paras 350-354; aff'd 2013 FCA 75; *Simon v Canada (Attorney General)*, 2013 FC 1117 at para 121 [*Simon*]).

103 I agree with the NCC's general premise that UNDRIP may be used to inform the interpretation of domestic law. As Justice L'Heureux Dubé stated in *Baker*, values reflected in international instruments, while not having the force of law, may be used to inform the contextual approach to statutory interpretation and judicial review (at paras 70-71). In *Simon*, Justice Scott, then of this Court, similarly concluded that while the Court will favour interpretations of the law embodying UNDRIP's values, the instrument does not create substantive rights. When interpreting Canadian law there is a rebuttable presumption that Canadian legislation is enacted in conformity to Canada's international obligations. Consequently, when a provision of domestic law can be ascribed more than one meaning, the interpretation that conforms to international agreements that Canada has signed should be favoured.

*R.* v. *Quock*, 2015 YKTC 32 (CanLII):

[114] On May 31, 2015 the Summary of the Final Report of the Truth and Reconciliation Commission of Canada was released (the “Summary Report”).

[115] The Preface to the Summary Report contains the following excerpts:

…

[116] Including within the Summary Report was a section entitled “Call to Action”. The Call to Action in the area of justice included the following:

…

42) We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982,* and the *United Nations Declaration on the Rights of Indigenous Peoples,* endorsed by Canada in November 2012.

# *First Nations Child and Family Caring Society of Canada* v. *Canada (Attorney General)*, 2012 FC 445 (aff'd 2013 FCA 75), para. 155:

I accept Amnesty’s contention that international human rights law requires Canada to monitor and enforce individual human rights domestically, and to provide effective remedies where these rights are violated ...

And at para. 351:

The Supreme Court of Canada has recognized the relevance of international human rights law in interpreting domestic legislation such as the *Canadian Human Rights Act*. The Court has held that in interpreting Canadian law, Parliament will be presumed to act in compliance with its international obligations. As a consequence, where there is more than one possible interpretation of a provision in domestic legislation, tribunals and courts will seek to avoid an interpretation that would put Canada in breach of its international obligations. Parliament will also be presumed to respect the values and principles enshrined in international law, both customary and conventional.

And at para. 353:

International instruments such as the UNDRIP and the *Convention on the Rights of the Child* may also inform the contextual approach to statutory interpretation: see *Baker v. Canada* *(Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39 (QL) at paras. 69-71.

# *Simon* v. *Attorney General of Canada*, 2013 FC 1117 (reversed in appeal):

[53] The Applicants ... look to Canada's commitment in article 5 of the *Social Union Framework Agreement* [SUFA] and Canada's endorsement of the *United Nations Declaration on the Rights of Indigenous Peoples* [*UNDRIP*], more specifically articles 19, 21 and 43 to argue that both instruments reflect values and principles that should have guided the Minister in his decision making.

[121] The Supreme Court of Canada has acknowledged the importance of international human rights law in the interpretation of domestic legislation such as the *Canadian Human Rights Act,* RSC 1985, c H-6*.* When it comes to interpreting Canadian law, there is a presumption, albeit refutable, that Canadian legislation is enacted in conformity to Canada's international obligations.  Consequently, when a provision of domestic law can be ascribed more than one meaning, the interpretation that conforms to international agreements that Canada has signed should be favoured. In the present instance, the Applicants invoke *UNDRIP* to inform the contextual approach to statutory interpretation as per *Baker* cited above, at paras 69-71*.* Indeed, while this instrument does not create substantive rights, the Court nonetheless favours an interpretation that will embody its values*.*

# *Adoption – 1212*, [2012] R.J.Q. 1137 (Cour du Québec (Chambre de la jeunesse))

*Adoption – 1212*, [2012] R.J.Q. 1137 (Court of Québec (Youth Division))

587 Another instrument of international law that applies to the situation of Aboriginal children is the *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly of the United Nations on September 13, 2007 and endorsed by Canada on November 12, 2010. The Declaration was adopted in a spirit of partnership and mutual respect, and with the objective of respecting and promoting the intrinsic rights of Aboriginal peoples.

**International examples of implementation**

There have been numerous actions around the world to concretely implement the *UN Declaration*. Examples include the following:

In **Bolivia**, the *Declaration* was adopted at the national level as Law No. 3760 of 7 November 2007 and incorporated into the new Constitution promulgated on 7 February 2009.  Bolivia emphasizes that it “has elevated the obligation to respect the rights of indigenous peoples to constitutional status, thereby becoming the first country in the world to implement this international instrument”.[[1]](#endnote-1)

In the Constitution of **Ecuador**, Indigenous, communities, peoples and nations are “recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments” a wide range of collective rights.[[2]](#endnote-2) These constitutional rights clearly include those in the *UN Declaration on the Rights of Indigenous Peoples*.

In the **Arctic**, **Greenland** achieved significantly enhanced self-government on June 21, 2009 and celebrated its new partnership with **Denmark**.[[3]](#endnote-3)  As described by the former Premier of Greenland Kuupik Kleist, “this new development in Greenland and in the relationship between Denmark and Greenland should be seen as a **de facto implementation of the Declaration** and, in this regard, hopefully an inspiration to others”.[[4]](#endnote-4)

In August 2009, **Norway** affirmed: “The Declaration contextualizes all existing human rights for Indigenous Peoples and provides therefore the natural frame of reference for work and debate relating to the promotion of indigenous peoples rights”.[[5]](#endnote-5)

In May 2017, the **African Court on Human and Peoples’ Rights** ruled that **Kenya** had violated the human rights of the Ogiek people.[[6]](#endnote-6) In so doing, the African Court relied on the *UN Declaration* in interpreting African human rights law.[[7]](#endnote-7)

In **Belize**, the Supreme Court of Belize relied on the *UN Declaration* and other aspects of international and domestic law in upholding the land and resource rights of the Maya people.[[8]](#endnote-8)

Within the **Organization of American States** (OAS), the UN Declaration was used as “the baseline for negotiations and … a minimum standard” in drafting the *American Declaration on the Rights of Indigenous Peoples*.[[9]](#endnote-9) The *American Declaration* was adopted by consensus in June 2016. Members of the OAS include countries in **North, South and Central America and the Caribbean**.

See also Mauro Barelli, *Seeking Justice in International Law: The Significance and Implications of the UN Declaration on the Rights of Indigenous Peoples (Routledge Research in International Law)* (New York: Routledge, 2016), at 67:

… in light of the degree of authoritativeness and legitimacy that the Declaration has acquired in the international legal system, **States are not in a position to dismiss it as a mere aspirational text**. In this context, political pressure towards State compliance with the UNDRIP is exercised by a number of international organs that deal, directly or incidentally, with the issue of indigenous rights. Furthermore, **human rights treaty bodies have used the Declaration to interpret and expand a number of provisions** contained within their respective instruments. … More importantly, there are ways in which **regional and domestic courts can rely, either directly or indirectly, on the UNDRIP**. In particular, as suggested by the practice of the IACtHR [Inter-American Court of Human Rights] and a number of national courts, the **UNDRIP can be used as an authoritative instrument to clarify, interpret and expand the meaning and scope of regional and domestic laws**.

**Endnotes**

1. Permanent Forum on Indigenous Issues, *Information received from Governments:  Bolivia*, E/CN.19/2009/4/Add.2 (24 February 2009), para. 57. [↑](#endnote-ref-1)
2. *Constitution of the Republic of Ecuador*, 2008, as revised, art. 57. [↑](#endnote-ref-2)
3. *Act on Greenland Self-Government*, online:               <<http://uk.nanoq.gl/sitecore/content/Websites/uk,-d-,nanoq/Emner/Government/~/media/F74BAB3359074B29AAB8C1E12AA1ECFE.ashx>>.  This new Act recognizes Greenlanders as a people under international law (preamble) and Greenlandic as the official language (s. 20).  The Act also provides for Greenland’s ownership and control of all natural resources (ss. 2-4 and 7). [↑](#endnote-ref-3)
4. Greenland (Delegation of Denmark), “Statement by Mr. Kuupik Kleist, Premier of Greenland” (Delivered to the Expert Mechanism on the Rights of Indigenous Peoples, 2d Sess., Geneva, 11 August 2009) at 2. [↑](#endnote-ref-4)
5. Norway, “Statement (Agenda Item 4)” (Delivered to the Expert Mechanism on the Rights of Indigenous Peoples, 2d Sess, Geneva, 12 August 2009) (copy on file with author). [↑](#endnote-ref-5)
6. *African Commission on Human and Peoples’ Rights* v. *Republic of Kenya*, Application No. 006/2012, African Court on Human and Peoples’ Rights, Judgment, 26 May 2017. [↑](#endnote-ref-6)
7. *Ibid.*, paras. 131 and 209. [↑](#endnote-ref-7)
8. *Cal v.* *Attorney General of Belize and* *Minister of Natural Resources and Environment; Coy v.* *Attorney General of Belize and* *Minister of Natural Resources and Environment* (18 October 2007) Claims No. 171 & 172 (Consolidated), (Supreme Court of Belize), paras. 118-135. [↑](#endnote-ref-8)
9. Organization of American States (Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples), *Report of the Chair on the Meetings for Reflection on the Meetings of Negotiations in the Quest for Points of Consensus (Washington, D.C., United States – November 26-28, 2007)*,OEA/Ser.K/XVI, GT/DADIN/doc.321/08 (14 January 2008), at 3:

   The majority of States and all of the indigenous representatives supported the use of the UN Declaration as the baseline for negotiations and indicated that this represented a minimum standard for the OAS Declaration. Accordingly, the provisions of the OAS Declaration ha[ve] to be consistent with those set forth in the United Nations Declaration. [↑](#endnote-ref-9)