

CIGI Papers No. 171 – April 2018

Engaging National Human Rights Institutions in Implementing the UN Declaration on the Rights of Indigenous Peoples

Brenda L. Gunn

CIGI Masthead

Executive

President **Rohinton P. Medhora**
Deputy Director, International Intellectual Property Law and Innovation **Bassem Awad**
Chief Financial Officer and Director of Operations **Shelley Boettger**
Director of the International Law Research Program **Oonagh Fitzgerald**
Director of the Global Security & Politics Program **Fen Osler Hampson**
Director of Human Resources **Susan Hirst**
Interim Director of the Global Economy Program **Paul Jenkins**
Deputy Director, International Environmental Law **Silvia Maciunas**
Deputy Director, International Economic Law **Hugo Perezcano Diaz**
Director, Evaluation and Partnerships **Erica Shaw**
Managing Director and General Counsel **Aaron Shull**
Director of Communications and Digital Media **Spencer Tripp**

Publications

Publisher **Carol Bonnett**
Senior Publications Editor **Jennifer Goyder**
Publications Editor **Susan Bubak**
Publications Editor **Patricia Holmes**
Publications Editor **Nicole Langlois**
Publications Editor **Lynn Schellenberg**
Graphic Designer **Melodie Wakefield**

For publications enquiries, please contact publications@cigionline.org.

Communications

For media enquiries, please contact communications@cigionline.org.

Copyright © 2018 by the Centre for International Governance Innovation

The opinions expressed in this publication are those of the author and do not necessarily reflect the views of the Centre for International Governance Innovation or its Board of Directors.



This work is licensed under a Creative Commons Attribution – Non-commercial – No Derivatives License. To view this license, visit (www.creativecommons.org/licenses/by-nc-nd/3.0/). For re-use or distribution, please include this copyright notice.

Printed in Canada on paper containing 100% post-consumer fibre and certified by the Forest Stewardship Council® and the Sustainable Forestry Initiative.

Centre for International Governance Innovation and CIGI are registered trademarks.

Centre for International Governance Innovation

67 Erb Street West
Waterloo, ON, Canada N2L 6C2
www.cigionline.org

Table of Contents

vi	About the Author
vii	About the International Law Research Program
vii	Acronyms and Abbreviations
1	Executive Summary
1	Introduction
2	Various Mandates of NHRIs
3	Role of NHRIs Internationally
7	Domestic Actions of NHRIs to Implement the UN Declaration
8	The CHRC and the Canadian Human Rights Tribunal
16	Conclusion and Recommendations
18	About CIGI
18	À propos du CIGI

About the Author

Brenda L. Gunn is a fellow with CIGI's International Law Research Program (ILRP). In this role, Brenda explores comparative approaches and best practices for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) internationally. Her work at CIGI involves engaging Indigenous peoples on the topic through workshops, conferences and other fora.

Brenda is also an associate professor in the Robson Hall Faculty of Law at the University of Manitoba, where she teaches constitutional law, international law and advocacy for the rights of Indigenous peoples in international law. Prior to joining the University of Manitoba, Brenda worked at a community legal clinic in Rabinal, Guatemala, on a case of genocide submitted to the Inter-American Commission on Human Rights.

Brenda has also worked with First Nations on Aboriginal and treaty rights issues in Manitoba and provided technical assistance to the UN Expert Mechanism on the Rights of Indigenous Peoples in the analysis and drafting of the report summarizing the responses to a survey on implementing the UN Declaration. A proud Métis woman, Brenda combines her research and activism. She is recognized for developing a key handbook in Canada on understanding and implementing the UN Declaration.

Brenda has a B.A. from the University of Manitoba and a J.D. from the University of Toronto. She completed her LL.M. in Indigenous peoples' law and policy at the University of Arizona and was called to the bars of Ontario and Manitoba.

About the International Law Research Program

The International Law Research Program (ILRP) at CIGI is an integrated multidisciplinary research program that provides leading academics, government and private sector legal experts, as well as students from Canada and abroad, with the opportunity to contribute to advancements in international law.

The ILRP strives to be the world's leading international law research program, with recognized impact on how international law is brought to bear on significant global issues. The program's mission is to connect knowledge, policy and practice to build the international law framework — the globalized rule of law — to support international governance of the future. Its founding belief is that better international governance, including a strengthened international law framework, can improve the lives of people everywhere, increase prosperity, ensure global sustainability, address inequality, safeguard human rights and promote a more secure world.

The ILRP focuses on the areas of international law that are most important to global innovation, prosperity and sustainability: international economic law, international intellectual property law and international environmental law. In its research, the ILRP is attentive to the emerging interactions among international and transnational law, Indigenous law and constitutional law.

Acronyms and Abbreviations

AHRC	Australian Human Rights Commission
APF	Asia Pacific Forum of National Human Rights Institutions
CASHRA	Canadian Association of Statutory Human Rights Agencies
CHRA	Canadian Human Rights Act
CHRC	Canadian Human Rights Commission
CHRT	Canadian Human Rights Tribunal
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
GANHRI	Global Alliance of National Human Rights Institutions
ICC	International Coordinating Committee
NGOs	non-governmental organizations
NHRIs	national human rights institutions
NZHRC	New Zealand Human Rights Commission
OHCHR	United Nations Human Rights Office of the High Commissioner
OHRC	Ontario Human Rights Commission
SUHAKAM	Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia)
UN Declaration	United Nations Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
UNPFII	United Nations Permanent Forum on Indigenous Issues
UPR	universal periodic review

Executive Summary

The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) is a key international human rights instrument for the protection and promotion of Indigenous peoples' inherent rights. The UN system and states recommitted to implementing the UN Declaration at the 2014 World Conference on Indigenous Peoples. Implementing the UN Declaration will require actions by multiple actors, including states, UN agencies and Indigenous peoples. However, national human rights institutions (NHRIs) and potentially the subnational (or provincial-level) institutions, also play a crucial role in promoting and monitoring the implementation of international human rights standards, such as those provided for in the UN Declaration. There exists much research that speaks to the role of NHRIs in promoting international human rights law domestically, but none that speaks specifically to the role of NHRIs in promoting implementation of the UN Declaration. This paper explores the roles that NHRIs can play at both the international and the domestic level in implementing the UN Declaration. The paper begins with a description of the role of NHRIs internationally, then looks at the roles of NHRIs domestically. Finally, the paper concludes with examples of what various NHRIs are doing to implement the UN Declaration and makes recommendations for enhanced roles for NHRIs in this work. While provincial human rights institutions do not have the same standing as NHRIs internationally, this paper will consider the role for provincial institutions in the implementation of the UN Declaration domestically, where appropriate.

Introduction

The UN Declaration is a key international human rights instrument for the protection and promotion of Indigenous peoples' inherent rights.¹ The UN system and states recommitted to implementing the UN Declaration at the

1 United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, UN Doc A/RES/61/295 (2007), art 3 [UN Declaration].

2014 World Conference on Indigenous Peoples.² Implementing the UN Declaration will require actions by multiple actors, including states, UN agencies and Indigenous peoples. However, NHRIs and potentially the subnational (or provincial-level) institutions, also play a crucial role in promoting and monitoring the implementation of international human right standards, such as those provided for in the UN Declaration.³

While this role is being increasingly recognized by the international community, a global survey of NHRIs reported that NHRIs feel underappreciated, are not as effective as they could be and that many of their recommendations to governments were not followed up.⁴ While the work of NHRIs is vital for the promotion and protection of human rights standards domestically, NHRIs also have an opportunity to advance human rights at the international level. There exists much research that speaks to the role of NHRIs in promoting international human rights law domestically, but none that speaks specifically to the role of NHRIs in promoting implementation of the UN Declaration.⁵ This paper explores the roles that NHRIs can play at both the international and the domestic level in implementing the UN Declaration. The paper begins with a description

2 UN General Assembly (UNGA), *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, 69th Sess, UN Doc A/RES/69/2 (2014).

3 United Nations Human Rights Office of the High Commissioner (OHCHR), "OHCHR and NHRIs", online: <www.ohchr.org/EN/Countries/NHR/ Pages/NHRMain.aspx>.

4 *Ibid*; OHCHR, "The state of National Human Rights Institutions – a global view", online: <www.ohchr.org/EN/NewsEvents/Pages/StateOfNHRIs.aspx>.

5 See Richard Carver, "A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law" (2010) 10:1 *Hum Rts L Rev* 1; Katerina Linos & Tom Pegrarn, "Architects of Their own Making: National Human Rights Institutions and the United Nations" (2016) 38:4 *Hum Rts Q* 1109; Linda Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 *Harv Hum Rts J* 1 [Reif, "Building Democratic Institutions"]; Linda Reif, "The Domestic Implementation of International Human Rights Law in Canada: The Role of Canada's National Human Rights Institutions" in Oonagh E Fitzgerald et al, eds, *The Globalized Rule of Law* (Toronto, ON: Irwin Law Inc, 2006) 467–517 [Reif, "Domestic Implementation"]; Sanzhuan Guo, "Effectiveness of National Human Rights Institutions in International Human Rights Law: Problems and Prospects" (2008) 14 *Asian Yearbook Intl L* 101; Veronika Haász, "The Role of National Human Rights Institutions in the Implementation of the UN Guiding Principles" (2013) 14 *Hum Rts Rev* 165; Jeong-Woo Koo & Francisco O Ramirez, "National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966–2004" (2009) 87 *Social Forces* 1321; Anne Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing?" (2006) 28 *Hum Rts Q* 904.

of the role of NHRIs internationally, then looks at the roles of NHRIs domestically. Finally, the paper concludes with examples of what various NHRIs are doing to implement the UN Declaration and makes recommendations for enhanced roles for NHRIs in this work. While provincial human rights institutions do not have the same standing as NHRIs internationally, this paper will consider the role for provincial institutions in the implementation of the UN Declaration domestically, where appropriate.

As well, engaging at the international level through collaboration with mechanisms such as the Human Rights Council and treaty bodies allows NHRIs to take a top-down approach to implementing human rights standards and overcome some of the barriers they face domestically. Enhancing the roles of NHRIs provides greater support for Indigenous peoples in their efforts to push for implementation, provides an arm's-length (unbiased) intermediary in efforts to implement nationally and provides expert advice to government. The role of NHRIs in promoting the rights of Indigenous peoples as articulated in the UN Declaration is significant, as they are likely to "command more respect and authority than [non-governmental organizations] NGOs," potentially including Indigenous peoples' organizations.⁶

Various Mandates of NHRIs

Over the past few decades, there has been an increase in the establishment of national human rights institutions.⁷ As well, the roles and responsibilities of these institutions evolved: "Unlike a classical ombudsman office, the jurisdiction of a human rights commission is specifically focused on human rights and non-discrimination....[A] human rights commission seeks to receive and investigate complaints alleging human rights abuses and discrimination based on gender, race/ethnicity, sexual orientation or physical

disability."⁸ It is challenging to discuss the roles of NHRIs generally, as each is established under a specific statute, which dictates its specific mandate, composition and structure.⁹ While the mandates of NHRIs vary, generally speaking, NHRIs are domestic bodies with a statutory or constitutional mandate to protect and promote human rights.¹⁰ While there are many variances on the mandates, all NHRIs are autonomous bodies mandated to promote and protect human rights.¹¹ Most often, NHRIs are established with the responsibility to protect and promote human rights, often with reference to a specific domestic human rights statute.¹²

While NHRIs are part of the state and funded by the state, they operate and function independently from the government.¹³ While their mandates vary, based on the specific statutory provisions that established them, core functions generally include complaint handling, human rights research and education, and making recommendations to government.¹⁴ Protecting human rights can be achieved through receiving, investigating and resolving complaints, as well as through mediating and monitoring activities.¹⁵ Promotion of human rights can be done through education, outreach, the media, publications, training and capacity building, and advising the government.¹⁶

In fulfilling their mandates, NHRIs engage in activities at both the international and the domestic

6 Smith, *supra* note 5 at 909.

7 Koo & Ramirez, *supra* note 5 at 1326; see also Sonia Cardenas, "Emerging Global Actors: The United Nations and National Human Rights Institutions" (2003) 9 *Global Governance* 23 at 23.

8 Koo & Ramirez, *supra* note 5 at 1325.

9 Smith, *supra* note 5 at 909.

10 Global Alliance of National Human Rights Institutions (GANHRI), "GANHRI Sub-Committee on Accreditation (SCA)", online: <<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>>; see also OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No 4 (New York, NY, 2010) online: <www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf> at 13 [OHCHR, *National Human Rights Institutions*].

11 Carver, *supra* note 5 at 4.

12 See e.g. *Canadian Human Rights Act*, RSC 1985, c H-6 ("the Commission is generally responsible for the administration of this...Act", s 27[1]).

13 GANHRI, "GANHRI SCA", *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 13; see also Smith, *supra* note 5 at 909.

14 GANHRI, "GANHRI SCA", *supra* note 10; see also Reif, "Building Democratic Institutions", *supra* note 5 at 19; see also Guo, *supra* note 5 at 104.

15 GANHRI, "Paris Principles", online: <<http://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>>; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 22.

16 GANHRI, "Paris Principles", *supra* note 15; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 23. See also Smith, *supra* note 5 at 905.

level. There is increasing recognition of the important role of NHRIs in promoting human rights within the international arena, and organizations including the United Nations are acknowledging the importance of NHRIs in protecting human rights domestically.¹⁷ In fact, Sonia Cardenas asserts that the emergence of NHRIs “marks a potentially significant step in the implementation of international human rights law.”¹⁸ NHRIs do this by participating at the international level, but also by internalizing international human rights law at the domestic level.¹⁹ “the adoption of NHRIs in nation states involves the *national incorporation* of the global human rights regime. Incorporation indicates enactment of global human rights into national law and organizational structure.”²⁰ NHRIs play a key role in bringing the international standards set out in the UN Declaration to the domestic level.²¹

One of the reasons that NHRIs play such an important role in implementing the UN Declaration in the domestic context is their intermediary role between governments and NGOs. NHRIs have the potential to mobilize human rights efforts due to their mandate of receiving and investigating complaints of human rights violations, as well as their relationship with human rights NGOs.²² Given their arm’s length from government, NHRIs can act as the essential link between government and civil society, bridging the divide between the rights of individuals and state responsibilities.²³

Role of NHRIs Internationally

Within the UN system, NHRIs play an important role in the promotion and protection of rights, including the rights of Indigenous peoples. As Richard Carver points out, “Increasingly there is an expectation that NHRIs will act as links to the international human rights regime.”²⁴ This section briefly describes how NHRIs can engage in the UN system and the roles that NHRIs can play within the UN system. This section also provides some good examples of NHRIs’ work at the United Nations to promote implementation of the UN Declaration.

The primary way for NHRIs to engage in international human rights work at the UN level is through accreditation with the Global Alliance of National Human Rights Institutions (GANHRI), formerly known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. This accreditation only applies to NHRIs, not to subnational or provincial human rights institutions. Accreditation is based on the “Paris Principles” relating to the status of national institutions.²⁵ The Paris Principles provide a benchmark for NHRIs and reaffirmed the important role played by NHRIs at the 1993 World Conference on Human Rights.²⁶ Through this accreditation, NHRIs have special rights and access at the international level.²⁷

The Paris Principles resulted from a workshop on NHRIs coordinated by the UN Commission on Human Rights in 1991 and were adopted in 1993 by the United Nations General Assembly and require NHRIs to protect and promote human rights.²⁸ Generally speaking, there are six main areas considered for accreditation under the Paris Principles: NHRIs must have a mandate and competence, which means they have a broad

17 Reif, “Building Democratic Institutions”, *supra* note 5 at 2.

18 Cardenas, *supra* note 7 at 23.

19 Guo, *supra* note 5 at 116.

20 Koo & Ramirez, *supra* note 5 at 1326.

21 See Reif, “Building Democratic Institutions”, *supra* note 5 (“all types of national human rights institutions can act as mechanisms for the domestic implementation of the international human rights obligations of the state and assist in strengthening human rights protection” at 2).

22 Koo & Ramirez, *supra* note 5 at 1342.

23 GANHRI, “Roles and types of NHRIs”, online: <<http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx>>; see also Guo, *supra* note 5 at 113.

24 Carver, *supra* note 5 at 3.

25 UNGA, *Principles Relating to the Status of National Institutions*, 48th Sess, 85th Mtg, A/RES/48/134 (1993) [UNGA, *Principles*].

26 Haász, *supra* note 5 at 167.

27 GANHRI, “GANHRI SCA”, *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 21.

28 Linos & Pegram, *supra* note 5 at 1113; UNGA, *Principles*, *supra* note 25; GANHRI, “Paris Principles”, *supra* note 15; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 21.

mandate based on universal human rights norms and standards; they must have autonomy from the government, independence that is provided for by statute or constitution; pluralism; adequate resources and adequate powers of investigation.²⁹ As noted by Carver, “the adoption of the Paris Principles in 1991 not only marked the point at which clear standards for the creation of NHRIs were articulated; it was also a turning point after which the formation of such institutions proceeded apace.”³⁰ While Katerina Linos and Tom Pegram note that this framework may not be perfect, it is at least a concrete template for NHRI design.³¹

Based on these principles, there are three levels of accreditation: “A,” “B,” or “C.” “A-status” institutions fully comply with the Paris Principles.³² These institutions have voting rights at meetings of national institutions; can hold office in the Bureau of the International Coordinating Committee (ICC), or any of its subcommittees; and are entitled to participate in the Human Rights Council’s sessions, speak to any agenda item, submit documentation and have their own seat.³³ Currently, there are 78 A-status NHRIs, including the Australian Human Rights Commission (AHRC), the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia [SUHAKAM]), the New Zealand Human Rights Commission (NZHRC), the Kenya National Commission on Human Rights, the Nigerian National Human Rights Commission, the South African Human Rights Commission, the Canadian Human Rights Commission (CHRC), the Finnish National Human Rights Institution and the Norwegian National Human Rights Institution.³⁴

B-status institutions either do not fully comply with the Paris Principles, or have not submitted the appropriate documentation to make that determination.³⁵ These institutions cannot vote

or hold office with the Bureau of the ICC, nor do they have rights with the Human Rights Council.³⁶ Level “C” institutions are non-members that do not comply with the Paris Principles.³⁷ They do not have any rights or privileges with the ICC or the Human Rights Council.³⁸ There are 33 B-status institutions and 10 C-status institutions.³⁹

Through A-status accreditation, NHRIs can engage in numerous mechanisms of the Human Rights Council, such as the universal periodic review (UPR); the special procedures, including the Special Rapporteur on the rights of Indigenous peoples; and the complaints procedures to advance the rights of Indigenous peoples.⁴⁰ This role during the UPR surpasses the participation rights of NGOs (including Indigenous peoples’ organizations),⁴¹ and, thus, NHRIs can play a significant role in promoting the rights of Indigenous peoples during the UPR. NHRIs can play a very important role during the UPR to promote greater recognition of Indigenous peoples’ rights, as articulated in the UN Declaration.

Before the UPR, NHRIs can consult with the government when they create their report and urge the government to release a draft copy of their report for public comment.⁴² While the government should consult NHRIs and other relevant stakeholders when making their report, this does not guarantee that NHRI information will be included in full in the state’s report.⁴³ NHRIs can prepare their own independent report with additional credible information on the human rights situation, including Indigenous peoples’ rights as articulated in the UN Declaration.⁴⁴ Within their report, NHRIs can raise issues and propose questions for the state under review and suggest

29 GANHRI, “Paris Principles”, *supra* note 15; see OHCHR, *National Human Rights Institutions*, *supra* note 10 at 31.

30 Carver, *supra* note 5 at 6.

31 Linos & Pegram, *supra* note 5 at 1112.

32 GANHRI, “GANHRI SCA”, *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 44.

33 GANHRI, “GANHRI SCA”, *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 45.

34 GANHRI, *Chart of the Status of National Institutions*, online: <<http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20.pdf>> [GANHRI, *Chart of the Status*].

35 GANHRI, “GANHRI SCA”, *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 45.

36 GANHRI, “GANHRI SCA”, *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 45.

37 GANHRI, “GANHRI SCA”, *supra* note 10; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 45.

38 GANHRI, “GANHRI SCA”, *supra* note 10.

39 GANHRI, *Chart of the Status*, *supra* note 34.

40 Asia Pacific Forum of National Human Rights Institutions (APF) & OHCHR, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions* (June 2013), online: <www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf> at 102.

41 Linos & Pegram, *supra* note 5 at 1128.

42 APF & OHCHR, *supra* note 40 at 105.

43 *Ibid.*

44 *Ibid.*; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 133.

recommendations that the working group could make to the state.⁴⁵ During the UPR, NHRIs are entitled to make oral statements immediately after the state; however, the statements must be focused on the draft report.⁴⁶ After the UPR, NHRIs can provide technical assistance, encourage their state to act on the recommendations, engage in their own implementation initiatives, raise awareness of the UPR and its recommendations, and monitor the state's actions in implementing the recommendations.⁴⁷

There are already some examples of NHRIs participating in the UPR and making reference to the UN Declaration that should be built upon for future UPRs. During Canada's second UPR, the CHRC submitted a report, which included a reference to the UN Declaration: "In 2010, Canada gave its qualified support to the Declaration on the Rights of Indigenous Peoples. Despite Canada's reservations, its endorsement provides additional clarity for the way Canada's legal system might address Aboriginal human rights issues. Nevertheless, much remains to be done before the principles in the Declaration are comprehensively applied in the lives of Aboriginal peoples in Canada."⁴⁸

The AHRC's submission for Australia's second UPR went even further, including recommendations for Australia to take action to implement the UN Declaration: "The UN Declaration on the Rights of Indigenous Peoples has yet to be implemented in law, policy and practice. Recommendation: Government develop, in partnership with Aboriginal and Torres Strait Islander peoples, a National Strategy to give effect to the Declaration; include the Declaration in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth);

and review existing legislation, policies and programmes for conformity with the Declaration."⁴⁹

Nationally, NHRIs should raise awareness of the complaints procedure, such as how it works, possible outcomes and its confidentiality.⁵⁰ This complaints procedure was "established to address consistent patterns of gross and reliably attested violations of all human rights."⁵¹ Importantly, the complaints procedure is the only global complaints procedure that protects all human rights and fundamental freedoms of the UN's state members.⁵² NHRIs can submit complaints on a victim's behalf if they have evidence that there is a consistent pattern of a human rights violation, and assist Indigenous claimants as they navigate the complaints procedure.⁵³ By working closely with Indigenous communities prior to the release of any statements, NHRIs avoid speaking for Indigenous peoples and instead assist them in their own advocacy. Furthermore, consultation with Indigenous claimants prior to engagement with the complaints procedure would comply with article 15(2) of the UN Declaration, which mandates that "States shall take effective measures, in *consultation and cooperation* with the indigenous peoples concerned, to combat prejudice and eliminate discrimination."⁵⁴ These can be important tools for promoting implementation of the UN Declaration, as there is no body charged with direct monitoring.

Another key activity that NHRIs can engage in to promote implementation of the UN Declaration is to encourage human rights treaty monitoring bodies to use the UN Declaration to interpret how different human rights treaties apply to Indigenous peoples.⁵⁵ As Carver notes, "after an initial lack of clarity about the role of NHRIs in reporting to treaty bodies, they are now seen as an important source of independent information

45 APF & OHCHR, *supra* note 40 at 109; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 133.

46 APF & OHCHR, *supra* note 40 at 106.

47 *Ibid*; see also OHCHR, *National Human Rights Institutions*, *supra* note 10, at 133.

48 CHRC, *Submission from the Canadian Human Rights Commission (CHRC) to the United Nations Human Rights Council as part of the second Universal Periodic Review (UPR) of Canada's Human Rights Obligations* (9 October 2012), online: <http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/CA/CHRC_UPR_CAN_S16_2013_%20CanadianHumanRightsCommission_E.pdf> at para 20.

49 AHRC, *Australian Human Rights Commission Individual UPR Submission* (21 March 2015), online: <www.ohchr.org/EN/HRBodies/UPR/Pages/UPRAUStakeholdersInfoS23.aspx> at para 14.

50 APF & OHCHR, *supra* note 40 at 115.

51 OHCHR, "Human Rights Council Complaints Procedure", online: <www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>.

52 OHCHR, "Frequently Asked Questions", online: <www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/FAQ.aspx>.

53 APF & OHCHR, *supra* note 40 at 115.

54 *UN Declaration*, *supra* note 1, art 15(2) [emphasis added].

55 APF & OHCHR, *supra* note 40 at 120.

in the process of considering country reports.”⁵⁶ Treaty monitoring bodies play an important role in the legal articulation of human rights, as the Human Rights Council is increasingly politicized.⁵⁷

States should consult NHRIs when developing their reports. NHRIs should also submit an alternative or parallel report on their state’s compliance with the treaty.⁵⁸ In their alternative reports, NHRIs should use the UN Declaration to interpret state obligations under the treaty in relation to Indigenous peoples and propose recommendations that the treaty body could make to the state.⁵⁹ NHRIs should also attend the periodic reviews for each treaty, including reference to the rights of Indigenous peoples. Finally, and importantly, NHRIs can also use the treaty bodies’ jurisprudence in their work when advocating for law and policy reforms.⁶⁰

The AHRC referenced the UN Declaration in their submission to Australia’s periodic review before the Committee on Economic, Social and Cultural Rights: “Aboriginal and Torres Strait Islander peoples continue to experience an unacceptable level of disadvantage across most socio-economic indicators. The Commission has expressed concern about two over-arching issues that impact on the enjoyment of human rights for indigenous peoples: a) a lack of meaningful consultation with Aboriginal and Torres Strait Islander peoples in programs and policies that affect them and b) a failure to implement the UN Declaration on the Rights of Indigenous Peoples.”⁶¹

The NZHRC has also included recommendations related to the UN Declaration in their submission to the Committee on Elimination of Racial Discrimination for New Zealand’s periodic review: “Recommendation 6: The Committee urges the Government to commit to addressing the disproportionate representation of Māori in the criminal justice system by: (a) Ensuring actions are based on the Treaty and UNDRIP,

and are informed by the Waitangi Tribunal findings and [the Expert Mechanism on the Rights of Indigenous Peoples] EMRIP study.”⁶²

NHRIs are also increasingly getting involved at the United Nations Permanent Forum on Indigenous Issues (UNPFII). At the sixteenth session of the UNPFII, the APF held a side event on NHRIs and the rights of Indigenous peoples.⁶³ The side event included participation from many NHRIs from the Asia Pacific region, including the AHRC, the NZHRC and SUHAKAM. On May 22, 2013, the Australian government and the AHRC delivered a joint statement to the UNPFII, discussing Australia’s plans to implement the UN Declaration:

The Australian Government is committed to assisting Aboriginal and Torres Strait Islander peoples to achieve improved outcomes. We are working with the Australian Human Rights Commission and the National Congress of Australia’s First Peoples to increase awareness of, and encourage dialogue about, the Declaration in policy development, program implementation and service delivery as a way to embed the Declaration in how business is done. This strategy is essential to ensuring a cultural change that better acknowledges and addresses the needs identified by Indigenous peoples and communities. We will work to raise awareness of the Declaration with Aboriginal and Torres Strait peoples and all stakeholders, and facilitate discussion regarding the principles

56 Carver, *supra* note 5 at 2; see also Haász, *supra* note 5 at 169.

57 Linos & Pegram, *supra* note 5 at 1129.

58 APF & OHCHR, *supra* note 40 at 122; see also Cardenas, *supra* note 7 at 25.

59 APF & OHCHR, *supra* note 40 at 122-23.

60 *Ibid* at 126.

61 AHRC, *Information concerning Australia’s compliance with the International Covenant on Economic, Social and Cultural Rights* (8 May 2017), online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2fNHS%2fAUS%2f2f2405&Lang=en> at para 15.

62 NZHRC, *Submission in relation to the twenty-first and twenty-second periodic review of New Zealand under the Convention on the Elimination of All Forms of Racial Discrimination* (July 2017), online: <http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NZL/INT_CERD_IFN_NZL_28240_E.pdf> at para 60.

63 UNPFII, “Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration”, online: <www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2016/08/Tenth-Anniversary-of-the-United-Nations-Declaration-on-the-Rights-of-Indigenous-Peoples.pdf>; APF, “Demonstrating the work of NHRIs on the rights of Indigenous Peoples and the value of their participation in the United Nations Permanent Forum on Indigenous Issues” (Side event hosted at UNPFII, 16th Sess, 25 April 2017), online: <www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2016/08/Flier-APF-side-event-25-April-UNPFII.pdf>; UNPFII, “PFII Side Events – First Week, April 24-28”, online: <www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2016/08/UNPFII16SideEventsWeek1_1.1.pdf>.

underpinning the Declaration and what they mean in a practical context.⁶⁴

Another opportunity for NHRIs to contribute to the work of implementing the UN Declaration is through EMRIP. EMRIP recently adopted a new mandate under Resolution 33/25 of the Human Rights Council to engage with countries upon their request to provide technical assistance when developing domestic legislation and policies relating to Indigenous peoples, including the implementation of the UN Declaration.⁶⁵ NHRIs can be involved in this new process by encouraging their state government to request technical assistance from EMRIP and by aiding the state in implementing the recommendations.⁶⁶ Importantly, it was recommended that EMRIP increase its engagement with NHRIs.⁶⁷ The tenth session of EMRIP included an interactive dialogue with NHRIs, regional human rights institutions and similar mechanisms.⁶⁸ Expert member Laila Vars acknowledged that EMRIP sees NHRIs as key partners in the implementation of the UN Declaration. This dialogue included representatives from human rights commissions in New Zealand, Nepal and Mexico. This dialogue provided an opportunity for NHRIs to share some positive developments achieved in the implementation of the UN Declaration.

Victoria Tauli-Corpuz, the current Special Rapporteur on the Rights of Indigenous Peoples, is mandated to promote Indigenous rights and can do so by undertaking country visits, receiving information on Indigenous rights violations, urging states to take action against Indigenous rights violations, and reporting to the Human Rights Council and the UNGA on her findings and recommendations.⁶⁹

64 AHRC, News Release, "Implementation of the Declaration on the Rights of Indigenous Peoples" (24 May 2013), online: <www.humanrights.gov.au/news/speeches/implementation-declaration-rights-indigenous-peoples>.

65 OHCHR, "Country Engagement", online: <www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/RequestsUnderNewMandate.aspx>.

66 *Ibid.*

67 UNGA, Human Rights Council, *Expert Mechanism on the Rights of Indigenous Peoples*, UN Doc A/HRC/RES/33/25 (2016).

68 UNGA, Human Rights Council, EMRIP, *Annotated Provisional Agenda, 10th Sess*, UN Doc A/HRC/EMRIP/2017/1 (2017), online: <www.undocs.org/en/a/hrc/emrip/2017/1>.

69 OHCHR, "Special Procedures of the Human Rights Council", online: <www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>; APF & OHCHR, *supra* note 40 at 112-13; OHCHR, "Special Rapporteur on the rights of indigenous peoples" [OHCHR, "Special Rapporteur"], online: <www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx>.

Furthermore, the Special Rapporteur is specifically mandated with implementing international Indigenous human rights standards within states by promoting best practices such as new laws and government programs.⁷⁰

A country visit by a Special Rapporteur is one way to give a human rights situation international attention and is therefore an important opportunity for an NHRI to increase its effectiveness and build support for its work.⁷¹ NHRIs can provide their views, experience and knowledge to advise the expert on human rights issues.⁷² Additionally, after the Special Rapporteur visits a country, he or she releases a report of the visit during a session of the Human Rights Council.⁷³ NHRIs have the opportunity to address the Human Rights Council immediately after their respective state.⁷⁴ NHRIs should publicize the expert's report and monitor the state's actions in implementing the report's recommendations.⁷⁵ NHRIs can draw upon the report as an authoritative source when making recommendations to the government.⁷⁶

Domestic Actions of NHRIs to Implement the UN Declaration

NHRIs play an important role in domesticating international human rights law, such as the UN Declaration. Many of the ideas in this section could also apply to provincial human rights institutions, as they, too, can play a role in implementing the UN Declaration domestically. This can happen in a variety of ways, including

70 OHCHR, "Special Rapporteur", *supra* note 69.

71 APF & OHCHR, *supra* note 40 at 113.

72 *Ibid.*; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 132.

73 APF & OHCHR, *supra* note 40 at 113.

74 *Ibid.*; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 132.

75 APF & OHCHR, *supra* note 40 at 113; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 132.

76 APF & OHCHR, *supra* note 40 at 113; see also OHCHR, *National Human Rights Institutions*, *supra* note 10 at 132.

integrating international and domestic human rights laws into the investigation and resolution of a complaint.⁷⁷ In fact, Sanzhuan Guo argues that their interpretation of international human rights law domestically is an indicator of their effectiveness.⁷⁸ More specifically, NHRIs can rely upon international human rights obligations when interpreting how national legislation applies in specific situations.⁷⁹ Another possibility is to use international human rights, such as the UN Declaration, as examples of “good practices.”⁸⁰ NHRIs can undertake actions such as offer advice on human rights issues, encourage their states to ratify human rights treaties, review proposed legislation for human rights violations and assist in the development of national action plans.⁸¹

One of the challenges moving forward is that “if NHRIs play a role in domesticating international human rights law, one would expect to see this is reflected in their founding legislation, with institutions increasingly assigned a mandate that is derived from international rather than national standards.”⁸² At the time of this research, the UN Declaration was not specifically mentioned in the enabling legislation of any NHRI, although the enabling statutes for some NHRIs explicitly authorize the NHRI to promote international human rights law.⁸³ This does not mean that NHRIs cannot consider the UN Declaration in their work, but rather simply that explicit inclusion in their mandates may better facilitate this work.

There are some good examples where NHRIs have taken actions to implement the UN Declaration. While the precise actions that NHRIs can take to either directly implement the UN Declaration or support and promote implementation will depend on the specific mandate of the NHRI, this section provides some examples that can be taken by NHRIs under the general aim of promoting human rights. This section surveys examples from within Canada and internationally, including the CHRC, the Ontario Human Rights

Commission (OHRC), the Canadian Association of Statutory Human Rights Agencies (CASHRA), the AHRC, the NZHRC and SUHAKAM.

The CHRC and the Canadian Human Rights Tribunal

The first example of implementing the UN Declaration comes from the CHRC. The CHRC was created under the Canadian Human Rights Act (CHRA) in 1977 to administer the CHRA and the Employment Equity Act.⁸⁴ The CHRC promotes equal opportunity and cultivates an inclusive society free from discrimination based on one of the prohibited grounds of discrimination, namely race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.⁸⁵ The CHRC acts independently from the Government of Canada and holds Canada accountable to human rights matters.⁸⁶

The CHRC achieves its objectives through research and policy development, a fair and effective complaints process, advocating for the public interest with the aim to advance human rights for all Canadians and auditing federal employers to ensure compliance with employment equity.⁸⁷ The CHRC’s research and policy development advances human rights by informing the general public, academics, federal organizations and members of

77 Reif, “Building Democratic Institutions”, *supra* note 5 at 21.

78 Guo, *supra* note 5 at 114.

79 Reif, “Building Democratic Institutions”, *supra* note 5 at 21.

80 *Ibid.*

81 Cardenas, *supra* note 7 at 25.

82 Carver, *supra* note 5 at 6.

83 *Ibid* at 7-8.

84 *Canadian Human Rights Act*, RSC 1985, c H-6, s 26(1) [CHRA]; see also CHRC, “About Us” (14 January 2013), online: <www.chrc-ccdp.gc.ca/eng/content/about-us> [CHRC, “About Us”]; see also CHRC, *People First: The Canadian Human Rights Commission’s 2016 Annual Report to Parliament* (Ottawa, ON: Minister of Public Works and Government Services Canada, 2017) at 69, online: <www.chrcreport.ca/assets/pdf/CHRC-Annual-2016-EN-web.pdf> [CHRC, *People First*].

85 CHRA, *supra* note 84, s 2; see also CHRC, “About Us”, *supra* note 84; see also CHRC, *People First*, *supra* note 84 at 69.

86 CHRC, *People First*, *supra* note 84 at 69.

87 CHRC, “About Us”, *supra* note 84; see also CHRC, *People First*, *supra* note 84 at 69.

Parliament on human rights trends in Canada.⁸⁸ This research advises, informs and influences public debate, and includes submissions to the United Nations and Parliament on human rights issues.⁸⁹ The CHRC protects human rights by receiving and resolving discrimination complaints under the CHRA against the federal government, First Nations governments and federally regulated private companies.⁹⁰ The CHRC also represents the public interest in cases that may impact human rights law with the aim of setting precedents.⁹¹ The CHRC also monitors whether Canada is upholding its international human rights obligations.⁹²

The CHRC has taken several actions to implement international human rights, generally, and the UN Declaration, specifically. The CHRC recognizes its role in monitoring international human rights instruments, including sharing and gathering information on human rights issues in Canada. The CHRC's annual report advocates that⁹³ "We must reaffirm our respect of international human rights agreements by investing in our domestic human rights institutions."⁹⁴ The CHRC has played a critical role in developing international instruments that promote human rights.⁹⁵ The CHRC engages extensively at the UN level, including before treaty monitoring bodies such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, as well as making statements to the Human Rights Council and EMRIP.⁹⁶ In 2016–2017, the CHRC's report acknowledged that many organizations have advocated for the CHRC

"to be more proactive, more vocal and needs to take more leadership in setting the human rights agenda in Canada....They also said that the Commission should monitor and report on international human rights obligations, comment on bills and new laws, and create greater synergies with other human rights organizations and institutions."⁹⁷

Another key way that NHRIs can use the UN Declaration is to use it as the baseline for developing positions on policy and legislation relating to Indigenous peoples. The CHRC has included reference to the UN Declaration in its submissions to Parliament, for example, in the CHRC's *Special Report to Parliament on the Impacts of Bill C-21 (An Act to Amend the Canadian Human Rights Act)*, which would repeal section 67 of the CHRA, which had excluded matters under the Indian Act from human rights scrutiny. The CHRC mentioned the importance of the UN Declaration: "Achieving fundamental societal change will depend on determined, concerted efforts across all levels of government with full participation of Aboriginal peoples as well as respect for Aboriginal and Treaty rights and the United Nations Declaration on the Rights of Indigenous Peoples."⁹⁸ Here, the CHRC used the UN Declaration as the benchmark for understanding Indigenous peoples' rights within its domestic work on human rights.

Another positive example of using the UN Declaration to understand Indigenous peoples' rights was in the CHRC's 2013 *Report on Equality Rights of Aboriginal People*, where the UN Declaration was referenced numerous times as an authority for identifying Indigenous peoples' rights, namely the rights to economic well-being, employment, education, housing, health, justice and safety, political engagement and social inclusion.⁹⁹ The CHRC also included the UN Declaration in its 2011 submission to Parliament, *Now a Matter of Rights: Extending Full Human Rights Protection to First Nations*, a special report detailing the steps the CHRC has taken in response to repealing section 67

88 CHRC, "Our Work" (14 January 2013), online: <www.chrc-ccdp.gc.ca/eng/content/our-work>.

89 *Ibid.*

90 *Ibid.*

91 *Ibid.*

92 CHRC, *Canadian Human Rights Commission 2017-18 Departmental Plan* (2017) at 3, online: <www.chrc-ccdp.gc.ca/sites/default/files/201718departmental_plan.pdf>.

93 There is no mention of monitoring or upholding international human agreements in the CHRC's 2011-2014 annual reports, and in the 2015-2016 annual reports, the UN Declaration is not explicitly referred to.

94 CHRC, *People First*, *supra* note 84 at 2.

95 *Ibid* at 4.

96 CHRC, *Canadian Human Rights Commission 2015-16 Departmental Performance Report* (2016) at 10, online: <www.chrc-ccdp.gc.ca/sites/default/files/2015-16_departmental_performance_report.pdf> [CHRC, 2015-16 Departmental Performance Report]; see also CHRC, *Canadian Human Rights Commission 2013-14 Departmental Performance Report* (2014) at 5, online: <www.chrc-ccdp.gc.ca/sites/default/files/2013-14_departmental_performance_report.pdf>.

97 CHRC, *Canadian Human Rights Commission 2016-17 Report on Plans and Priorities* (2016) at 5, online: <www.chrc-ccdp.gc.ca/sites/default/files/rpp-2016-2017_eng.pdf>.

98 CHRC, *Special Report to Parliament on the Impacts of Bill C-21 (An Act to Amend the Canadian Human Rights Act)* (Ottawa, ON: Minister of Public Works and Government Services, 2014) at 1, online: <www.chrc-ccdp.gc.ca/sites/default/files/special_report_to_parliament_on_the_impact_of_bill_c_21_2014.pdf> [CHRC, Special Report].

99 CHRC, *Report on Equality Rights of Aboriginal People*, online: <www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report_2.pdf>.

of the CHRA.¹⁰⁰ Specifically, the CHRC used the UN Declaration to develop a set of guiding principles for a community-based dispute-resolution process, as well as the interpretative provision in the CHRA.¹⁰¹

The Canadian Human Rights Tribunal (CHRT) receives complaints from the CHRC and determines whether discrimination has occurred, and if so, fashions an appropriate remedy.¹⁰² The CHRT implements the UN Declaration by referencing it and using it as a legal authority in its decisions. In *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, the CHRT relied extensively on international human rights obligations in its decision to determine whether Indian and Northern Affairs Canada was discriminating on the basis of race and/or national or ethnic origin by providing inequitable and insufficient funding for family and child services to First Nations on reserves and in the Yukon.¹⁰³ The CHRT specifically discussed the UN Declaration and its application in Canada: “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.’”¹⁰⁴

In *Tabor v. Millbrook First Nation*, the CHRT referenced the UN Declaration when discussing the right to self-governance and self-determination for Indigenous peoples, even though the UN

Declaration was not argued by the parties.¹⁰⁵ In this case, Stacey Marshall Tabor argued that she was discriminated against based on her gender when Millbrook First Nation did not make her a captain of its fishery.¹⁰⁶ Decision maker Sophie Marchildon wrote, “I recognize that self-governance is of paramount importance for Aboriginal peoples. In fact, self-determination is recognized in the Annex and Article 4 of the *United Nations Declaration on the Rights of Indigenous Peoples* (which Canada endorsed on November 12, 2010).”¹⁰⁷

The CHRT also allowed parties to file submissions on the UN Declaration in *First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development)*,¹⁰⁸ *Tanner v. Gambler First Nation*¹⁰⁹ and *Matson et al. v. Indian and Northern Affairs Canada*.¹¹⁰ Through these references to the UN Declaration, the CHRT contributes to its increased legitimacy as the key international human rights instrument on Indigenous peoples’ rights, and also expands upon jurisprudence that explains and applies the rights in a domestic context. These cases demonstrate the role that the UN Declaration can play in interpreting domestic human rights instruments, and importantly, the role of NHRIs in making these connections.

The OHRC

Even when NHRIs do not have a complaints process, they can still play an important role in promoting understanding and implementation of the UN Declaration. The OHRC was established in 1961 to administer the Ontario Human Rights Code.¹¹¹ The OHRC works alongside the Human Rights Tribunal of Ontario and the Human Rights Legal Support Centre.¹¹² Broadly, they are mandated

100 CHRC, *Now a Matter of Rights: Extending Full Human Rights Protection to First Nations* (Ottawa, ON: Minister of Public Works and Government Services, 2011) at 1, online: <www.chrc-ccdp.gc.ca/sites/default/files/nmr_eqd-eng.pdf> [CHRC, *Now a Matter of Rights*].

101 *Ibid.*

102 CHRC, “A Guide to Understanding the Canadian Human Rights Tribunal”, online: <www.chrt-ccdp.gc.ca/resources/guide-to-understanding-the-chrt-en.html#section3-1>.

103 *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para 6.

104 *Ibid.* at para 452.

105 *Tabor v. Millbrook First Nation*, 2015 CHRT 6 at para 51.

106 *Ibid.* at para 1.

107 *Ibid.* at para 51.

108 *First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development)*, 2011 CHRT 4.

109 *Tanner v. Gambler First Nation*, 2015 CHRT 19 at para 80.

110 *Matson et al v. Indian and Northern Affairs Canada*, 2013 CHRT 13 at para 22.

111 *Ontario Human Rights Code*, RSO 1990, c H-19; OHRC, “About the Commission”, online: <www.ohrc.on.ca/en/about-commission> [OHRC, “About the Commission”].

112 OHRC, “About the Commission”, *supra* note 111.

to promote, protect and advance respect for human rights, and to work toward eliminating discrimination in Ontario.¹¹³ The specific functions of the OHRC are outlined in section 29 of the Ontario Human Rights Code and include developing and conducting educational programs for the public;¹¹⁴ facilitating research on discriminatory practices and making recommendations on how to eliminate those practices;¹¹⁵ examining legislation to determine if it is inconsistent with the Ontario Human Rights Code and making submissions to provincial, federal and municipal governments;¹¹⁶ initiating reviews and inquiries into incidents of conflict or tension in communities, industries and institutions to make recommendations, and help reduce the conflict and prevent it from occurring in the future, which may include legal action,¹¹⁷ encouraging the public, municipal or private agencies, organizations, groups and people to engage in programs to reduce conflict based on a prohibited ground of discrimination;¹¹⁸ preparing policies and guidelines on how the Ontario Human Rights Code should be interpreted;¹¹⁹ and making applications to the Human Rights Tribunal of Ontario if it is in the public interest to do so.¹²⁰

The OHRC also took a supportive position on the UN Declaration, even when Canada's position was still officially against the UN Declaration. The chief commissioner wrote letters to the prime minister, encouraging him to withdraw Canada's opposition to the UN Declaration.¹²¹ Now that Canada has issued statements supporting the UN Declaration and expressing its intention to implement it,

NHRIs (as well as subnational institutions) play an important role in keeping the pressure on Canada to take concrete steps toward implementation.

NHRIs' starting point for implementing the UN Declaration is to use the UN Declaration to interpret their enabling human rights legislation. One good example of this is the OHRC's inclusion of the UN Declaration in its policies on interpreting the Ontario Human Rights Code, recognizing that "International human rights laws and instruments set standards and obligations for domestic human rights law and policy."¹²² The OHRC recognized that Canadian and Ontario laws and human rights provisions that impacted Indigenous peoples should be in line with the provisions of the UN Declaration.¹²³ The *Policy on preventing discrimination based on Creed* cites the UN Declaration numerous times, including a reference to article 12, explaining: "the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) sets forth minimal standards and provides an internationally recognized framework for measuring the human rights of Indigenous peoples around the world. It also has provisions for protecting the rights of Indigenous peoples to practice their religious and spiritual beliefs."¹²⁴ The OHRC also references the UN Declaration when discussing how sacred sites and objects should be managed by the government.¹²⁵ This is an excellent way that the UN Declaration can be used to interpret general human rights standards in the context of Indigenous peoples' human rights.

CASHRA

CASHRA was established in 1972 and is an umbrella organization of the federal, provincial and territorial human rights commissions in Canada.¹²⁶ The association promotes human rights within Canada and abroad through public education projects and holds annual conferences where members can exchange information on human rights laws.¹²⁷ CASHRA also passes resolutions on human rights issues that are of

113 *Ontario Human Rights Code*, *supra* note 111, s 29.

114 *Ibid*, *supra* note 111, s 29(b); OHRC, "Brochures, factsheets and guides", online: <www.ohrc.on.ca/en/our_work/brochures_factsheets>.

115 *Ontario Human Rights Code*, *supra* note 111, s 29(c); OHRC, "Backgrounders and Research", online: <www.ohrc.on.ca/en/our_work/backgrounders_research>; OHRC, "Papers and Reports", online: <www.ohrc.on.ca/en/our_work/papers_reports>.

116 *Ontario Human Rights Code*, *supra* note 111, s 29(d); OHRC, "Submissions", online: <www.ohrc.on.ca/en/our_work/submissions>.

117 *Ontario Human Rights Code*, *supra* note 111, s 29(e); OHRC, "Legal", online: <www.ohrc.on.ca/en/our_work/legal>.

118 *Ontario Human Rights Code*, *supra* note 111, s 29(f); OHRC, "Letters", online: <www.ohrc.on.ca/en/our_work/letters>.

119 *Ontario Human Rights Code*, *supra* note 111, s 30; OHRC, "Policies and Guidelines", online: <www.ohrc.on.ca/en/our_work/policies_guidelines>.

120 *Ontario Human Rights Code*, *supra* note 111, s 29(i).

121 OHRC, "Indigenous Rights Declaration Letter", online: <www.ohrc.on.ca/en/news_centre/indigenous-rights-declaration-letter>.

122 OHRC, *Policy on preventing discrimination based on Creed* (2015) at 25, online: <www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20based%20on%20creed_accessible_0.pdf>.

123 *Ibid* at 108.

124 *Ibid* at 26.

125 *Ibid* at 118.

126 CASHRA, "About CASHRA", online: <www.cashra.ca/about.html>.

127 *Ibid*.

national interest and acts as an intervener in cases before the Supreme Court of Canada.¹²⁸

In a 2012 news release, CASHRA called upon all levels of government to implement the UN Declaration.¹²⁹ CASHRA explained that “The Declaration is a positive document that maps out a path for Indigenous peoples to be free from discrimination and secure in their identities and life choices. It recognizes the fundamental rights of Indigenous peoples around the world, and outlines minimum standards for their survival, dignity and wellbeing.”

Beginning in November 2014, CASHRA created a working group on the UN Declaration.¹³⁰ But even before this, CASHRA discussed the UN Declaration in its February 21, 2013, motion on missing and murdered Aboriginal women and girls.¹³¹ CASHRA found that the UN Declaration provides for a legal framework that is essential in the promotion and protection of Indigenous rights before urging the Government of Canada to take action to address the systemic discrimination that results in a disproportionate amount of violence toward Indigenous women and girls.¹³² CASHRA also passed a resolution endorsing the Truth and Reconciliation Commission’s calls to action, including the creation of a national and independent body to monitor and evaluate the progress toward reconciliation between Indigenous and non-Indigenous people in Canada. This resolution recognized that a national council would facilitate a “nation-to-nation” relationship between Indigenous peoples and the government and would aid in implementing the UN Declaration, which Canada has fully endorsed.¹³³

128 CASHRA, “History of CASHRA”, online: <www.cashra.ca/history.html>.

129 CASHRA, News Release, “Canada’s Human Rights Agencies call on all levels of Government to endorse the UN Declaration on the Rights of Indigenous Peoples” (July 2012), online: <<http://cashra.ca/news/canada-human-rights-agencies-call-on-all-levels-of-government-to-endorse-the-un-declaration-on-the-rights-of-indigenous-peoples.html>>.

130 CHRC, 2015-16 Departmental Performance Report, *supra* note 96 at 10.

131 CASHRA, News Release, “CASHRA Motion on Missing and Murdered Aboriginal Women and Girls” (21 February 2013), online: <<http://cashra.ca/news/cashra-motion-on-missing-and-murdered-aboriginal-women-and-girls.html>>.

132 *Ibid.*

133 CASHRA, News Release, “CASHRA Motion on the Establishment of an Independent, National Oversight Body to Monitor the Implementation of the Truth and Reconciliation Commission of Canada’s Calls to Action” (2 December 2016), online: <www.cashra.ca/news/cashra-motion-Dec-2-2016.html>.

The AHRC

The AHRC was established in 1986 by the Australian Human Rights Commission Act 1986.¹³⁴ The AHRC aims to promote and protect human rights in Australia and reaches those goals through education and public awareness. The commission develops human rights education programs and resources for schools, workplaces and the community;¹³⁵ resolves human rights complaints;¹³⁶ holds public inquiries for human rights issues that are of national importance;¹³⁷ provides legal advice to assist the court when cases involve human rights principles;¹³⁸ provides submissions to Parliament and governments to advise them when developing laws, policies and programs;¹³⁹ and conducts research on human rights and discrimination issues.¹⁴⁰

The AHRC has a commissioner dedicated specifically toward promoting and protecting Indigenous peoples’ rights.¹⁴¹ June Oscar AO began her five-year term as Australia’s Aboriginal and Torres Strait Islander social justice commissioner on April 3, 2017.¹⁴² The function of this specialized commission is to create annual social justice and native title reports that are tabled in federal Parliament; monitor the impact that laws, policies and programs have on Indigenous peoples; provide policy advice on pertinent Indigenous human rights issues; and support Indigenous education

134 *Australian Human Rights Commission Act 1986* (Ctw) [AHRC Act]; AHRC, “About the Commission”, online: <www.humanrights.gov.au/about-commission-0>.

135 AHRC Act, *supra* note 134, s 11(1)(n); see also AHRC, “About the Commission”, *supra* note 134.

136 AHRC Act, *supra* note 134, s 11(1)(f); see also AHRC, “About the Commission”, *supra* note 134.

137 AHRC Act, *supra* note 134, s 11(1)(f); see also AHRC, “About the Commission”, *supra* note 134.

138 AHRC Act, *supra* note 134, s 11(1)(o); see also AHRC, “About the Commission”, *supra* note 134.

139 AHRC Act, *supra* note 134, ss 11(1)(e), 11(1)(m); see also AHRC, “About the Commission”, *supra* note 134.

140 AHRC Act, *supra* note 134, s 11(1)(h); see also AHRC, “About the Commission”, *supra* note 134.

141 AHRC, “President & Commissioners”, online: <www.humanrights.gov.au/about/president-commissioners>.

142 AHRC, “June Oscar AO”, online: <www.humanrights.gov.au/about/commissioners/june-oscar-ao-aboriginal-and-torres-strait-islander-social-justice-commissioner>.

initiatives.¹⁴³ This commission also develops international human rights standards that are related to Indigenous peoples.¹⁴⁴ A dedicated Indigenous rights commissioner is important because it provides the AHRC with expertise in Indigenous issues. It should not be assumed that NHRIs are familiar with the issues faced by Indigenous peoples; a dedicated commissioner who is an established Indigenous advocate would combat any potential knowledge gaps.

The AHRC was one of the first NHRIs to take action on public education on the UN Declaration. In fact, the AHRC produced one of the first handbooks on the UN Declaration in 2010, which includes both a full version (approximately 70 pages) and an abridged version (approximately 10 pages). The commission has developed a website with a lot of information, including information geared toward Indigenous communities. The website uses the headings “get it, know it, use it” to organize the information. The AHRC developed several resources on the UN Declaration, which can be found on the website, including frequently asked questions and answers, the *Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, a poster with the provisions of the UN Declaration and a YouTube video.¹⁴⁵ The website section on “use it” provides a few brief examples of how people can use and cite the UN Declaration in their work.¹⁴⁶ This aspect of building Indigenous community capacity around the UN Declaration is a critical role that NHRIs can take, as many Indigenous organizations do not have the time or resources to do this work, and many Indigenous communities might not trust information provided by the state government. NHRIs are uniquely placed to operate as a conduit between the international human rights standards and the on-the-ground reality experienced by Indigenous peoples. Consequently, NHRIs have a key strategic role to play in giving full effect to the standards contained in the UN Declaration.

The AHRC developed a series of papers to engage Australians in dialogue on implementing the UN Declaration.¹⁴⁷ The papers discuss a range of topics, such as giving effect to the UN Declaration; self-determination; participation in decision making and free, prior and informed consent; culture; and equality and non-discrimination.¹⁴⁸ To promote dialogue, each paper ends with a series of questions for people to consider. The AHRC also partnered with the National Congress of Australia’s First Peoples to facilitate a series of dialogues on the UN Declaration.¹⁴⁹ These nationwide dialogues facilitated understanding of the UN Declaration among Aboriginal and Torres Strait Islander communities, government, business and industry, and was formally supported by Australia in 2009.¹⁵⁰ One of the goals of these dialogues was to integrate the principles and rights outlined in the UN Declaration into Australian policy and practice.¹⁵¹ Furthermore, the hope was that the ideas from these dialogues could be used to develop a national strategy on implementation of the UN Declaration over a 10-year period.¹⁵²

One of the key activities of the Aboriginal and Torres Strait Islander commissioner is the *Social Justice and Native Title Report* to the Australian Parliament. The 2013 *Social Justice and Native Title Report* reiterated the importance of implementing the UN Declaration to help rebuild the relationship between Aboriginal and Torres Strait Islander peoples and other Australians.¹⁵³

143 AHRC, “About Aboriginal and Torres Strait Islander Social Justice”, online: <www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/about-aboriginal-and-torres-strait-islander-social-justice>.

144 *Ibid.*

145 AHRC, “UN Declaration on the Rights of Indigenous Peoples” (29 November 2012), online: YouTube <www.youtube.com/watch?v=bB2uZxekt-k>.

146 AHRC, “Use it”, online: <<http://declaration.humanrights.gov.au/use-it>>.

147 See AHRC, “Declaration Dialogue Series”, online: <www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/declaration-dialogue>.

148 *Ibid.*

149 *Ibid.*

150 AHRC, *Annual Report 2013-2014* (2014) at 12, online: <www.humanrights.gov.au/sites/default/files/document/publication/ahrc_annual_report_2013-14v2.pdf>.

151 *Ibid.* at 52.

152 *Ibid.* at 54.

153 AHRC, 2013 *Social Justice and Native Title Report*, online: <www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-native>.

The NZHRC

The NZHRC was established in 1977 and is a statutory body under the Human Rights Act 1993.¹⁵⁴ The commission was created to advance human rights in New Zealand and to encourage harmonious relations among New Zealand's diverse populations.¹⁵⁵ The NZHRC also monitors equal employment opportunities and helps resolve complaints about discrimination.¹⁵⁶ The commission achieves its goals through monitoring the implementation of the New Zealand Human Rights Action Plan,¹⁵⁷ providing education, advocacy and promotion of human rights;¹⁵⁸ monitoring compliance with international human rights instruments and New Zealand law;¹⁵⁹ resolving and responding to human rights complaints;¹⁶⁰ and by acting as an intervener before courts and tribunals.¹⁶¹ The NZHRC is also responsible for coordinating human rights activities and programs;¹⁶² making public statements on human rights issues;¹⁶³ conducting research on human rights issues, specifically those related to the Treaty of Waitangi and its relationship with domestic and international human rights law;¹⁶⁴ and creating guidelines and codes of conduct to encourage compliance with the Human Rights Act.¹⁶⁵

Raising public awareness of the UN Declaration has been one of the key actions taken by the NZHRC. On June 1, 2017, the NZHRC released an article in *Tūrangawaewae*, the Human Rights Commission's

newsletter, titled "More work on putting UNDRIP into action needed."¹⁶⁶ The NZHRC described the implementation gap between recognition of the rights in the UN Declaration and their realization on the ground.¹⁶⁷ The NZHRC held multiple events to promote awareness of and discussion on the UN Declaration prior to its tenth anniversary.¹⁶⁸ The NZHRC has held fora on the UN Declaration. The first forum in September 2016 focused on the UN Declaration's significance in New Zealand.¹⁶⁹ The second forum focused on the international reporting processes to advance Maori rights and provided an overview of upcoming reporting opportunities and how Maori could prepare their own shadow reports.¹⁷⁰ These fora are important tools to promote awareness of the UN Declaration and how it can be used to improve Maori peoples' situation in Aoteroa/New Zealand.¹⁷¹ In 2016, the NZHRC produced *The Rights of Indigenous Peoples: What you need to know*, a guide that covers Indigenous rights and the UN Declaration.¹⁷²

A second key action on raising awareness is training sessions for policy advisers. The training included information on relevant international human rights instruments such as the UN Declaration.¹⁷³ The training, which is expected to extend to the public sector, is important because it provides policy writers with an understanding of the UN Declaration, vital for the promotion of Indigenous peoples' rights.¹⁷⁴

The NZHRC also has a dedicated Indigenous rights commissioner, Karen Johansen, who was appointed

154 *Human Rights Act 1993* (NZ), 1993/82; see also Human Rights Commission, "About the Commission", online: <www.hrc.co.nz/about/>.

155 *Human Rights Act 1993*, *supra* note 154, s 5(1); Human Rights Commission, "What the Commission Does", online: <www.hrc.co.nz/about/what-commission-does/>.

156 Human Rights Commission, "What the Commission Does", *supra* note 155.

157 *Human Rights Act 1993*, *supra* note 154, s 5(2)(m); Human Rights Commission, "What the Commission Does", *supra* note 155.

158 *Human Rights Act 1993*, *supra* note 154, s 5(2)(a); Human Rights Commission, "What the Commission Does", *supra* note 155.

159 *Human Rights Act 1993*, *supra* note 154, ss 5(2)(h), 5(2)(k); Human Rights Commission, "What the Commission Does", *supra* note 155.

160 *Human Rights Act 1993*, *supra* note 154, s 5(2)(h); Human Rights Commission, "What the Commission Does", *supra* note 155.

161 *Human Rights Act 1993*, *supra* note 154, s 5(2)(j); Human Rights Commission, "What the Commission Does", *supra* note 155.

162 *Human Rights Act 1993*, *supra* note 154, s 5(2)(b).

163 *Ibid.*, s 5(2)(c).

164 *Ibid.*, s 5(2)(d).

165 *Ibid.*, s 5(2)(e).

166 Human Rights Commission, News Release, "More work on putting UNDRIP into action needed" (1 June 2017), online: <www.hrc.co.nz/news/more-work-putting-undrip-action-needed/>.

167 *Ibid.*

168 *Ibid.*

169 Human Rights Commission, News Release, "Forums Prove to be a Strong Conversation Starter" (9 December 2016), online: <www.hrc.co.nz/news/forums-prove-be-strong-undrip-conversation-starter/>.

170 *Ibid.*

171 *Ibid.*

172 Human Rights Commission, *The Rights of Indigenous Peoples: What you need to know*, online: <www.hrc.co.nz/files/5814/5618/4456/NZHR_Booklet_12_WEB.pdf>.

173 Human Rights Commission, News Release, "Human Rights and the Treaty" (1 June 2017), online: <www.hrc.co.nz/news/human-rights-and-treaty/>.

174 *Ibid.*

in February 2008.¹⁷⁵ In her role as Indigenous rights commissioner, Johansen has presented to EMRIP on the implementation of the UN Declaration and has worked closely with the Independent Monitoring Mechanism regarding the UN Declaration in Aotearoa/New Zealand, a working group created by Tangata Whenua and endorsed by the National Iwi Chairs Forum to act as experts independent of government.¹⁷⁶ Unfortunately, no new Indigenous rights commissioner was appointed when Johansen retired.

SUHAKAM

SUHAKAM was established in 1999 under the Human Rights Commission of Malaysia Act 1999, Act 597.¹⁷⁷ The functions of SUHAKAM include promoting awareness and providing education on human rights;¹⁷⁸ advising and assisting the government when it formulates legislation and procedures and informing it on the necessary measures that need to be taken;¹⁷⁹ making recommendations to the government on the subscription or accession of treaties and other international human rights instruments;¹⁸⁰ and inquiring into complaints of human rights infringements.¹⁸¹

The Human Rights Commission of Malaysia Act 1999, Act 597, provides SUHAKAM with powers to enable it to discharge its functions effectively. SUHAKAM is empowered to undertake research through programs, seminars and workshops,

and to disseminate and distribute the results of such research;¹⁸² advise the government of complaints against it and recommend appropriate measures to be taken;¹⁸³ study and verify any infringements of human rights;¹⁸⁴ visit places of detention in accordance with procedures as prescribed by laws relating to the places of detention and make necessary recommendations;¹⁸⁵ issue public statements on human rights as and when necessary;¹⁸⁶ and undertake appropriate activities as necessary.¹⁸⁷

In 2010, SUHAKAM conducted a National Inquiry into the Land Rights of Indigenous Peoples, which was completed in 2012.¹⁸⁸ Through the national inquiry, SUHAKAM found that Indigenous peoples faced substantial and discriminatory obstacles in exercising their rights to own, possess and control their lands and territories.¹⁸⁹ The UN Declaration was used extensively throughout the report as an authority, forming part of the legal framework that granted rights to Indigenous peoples in Malaysia.¹⁹⁰ The UN Declaration is mentioned extensively in SUHAKAM's annual reports to highlight the Malaysian government's infringements of the UN Declaration and to make recommendations for change that align with the UN Declaration.¹⁹¹

175 Human Rights Commission, "Indigenous Rights Commissioner Karen Johnson's address at the Indigenous Nurses Aotearoa Conference" (7 August 2015), online: <www.hrc.co.nz/news/indigenous-rights-commissioner-karen-johnsons-address-indigenous-nurses-aotearoa-conference/>.

176 Human Rights Commission, "Indigenous Rights under the spotlight at the United Nations" (27 July 2015), online: <www.hrc.co.nz/news/indigenous-rights-under-spotlight-united-nations/>; Human Rights Council, EMRIP, *Report of the Monitoring Mechanism regarding the implementation of the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand*, 9th Sess, UN Doc A/HRC/EMRIP/2016/CRP.4, 13 July 2016.

177 Human Rights Commission of Malaysia Act 1999, Act 597; SUHAKAM, "History", online: <www.suhakam.org.my/about-suhakam/sejarah/>.

178 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(1)(a); SUHAKAM, "Functions and Powers", online: <www.suhakam.org.my/about-suhakam/fungsi-kuasa/>.

179 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(1)(b); SUHAKAM, "Functions and Powers", *supra* note 178.

180 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(1)(c); SUHAKAM, "Functions and Powers", *supra* note 178.

181 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(1)(d); SUHAKAM, "Functions and Powers", *supra* note 178.

182 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(2)(a); SUHAKAM, "Functions and Powers", *supra* note 178.

183 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(2)(b); SUHAKAM, "Functions and Powers", *supra* note 178.

184 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(2)(c); SUHAKAM, "Functions and Powers", *supra* note 178.

185 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(2)(d); SUHAKAM, "Functions and Powers", *supra* note 178.

186 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(2)(e); SUHAKAM, "Functions and Powers", *supra* note 178.

187 Human Rights Commission of Malaysia Act 1999, Act 597, *supra* note 177, s 4(2)(f); SUHAKAM, "Functions and Powers", *supra* note 178.

188 SUHAKAM, *Report of the National Inquiry into the Land Rights of Indigenous Peoples*, (Kuala Lumpur, Malaysia: Human Rights Commission of Malaysia [SUHAKAM], 2013) online: <<http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf>> [SUHAKAM, Report].

189 See SUHAKAM, *Submission to the United Nations Permanent Forum on Indigenous Issues*, 16th Sess (26 April 2017), online: <<https://papersmart.unmeetings.org/media2/14684043/item-iv-jerald-malaysia-suhakam-intervention-unpfi.pdf>>.

190 SUHAKAM, Report, *supra* note 188 at 10, 37–39.

191 See e.g. SUHAKAM, *Annual Report 2016*, (Kuala Lumpur, Malaysia: Human Rights Commission of Malaysia [SUHAKAM] 2017) at 26, 54, 97, 120, 158, online: <<https://drive.google.com/file/d/0B6FG7SONa3PRLVFOHoyODc0eDg/view>>.

This overview demonstrates that there are many actions that NHRIs can undertake to promote implementation of the UN declaration in the domestic realm. Using the UN declaration within the domestic work of NHRIs is a means of extending the scope of Indigenous peoples' rights protected at the domestic level, perhaps even beyond those specifically articulated in their enabling legislation.¹⁹²

Conclusion and Recommendations

As demonstrated throughout this paper, NHRIs play a critical role in the promotion and protection of human rights. This role is relevant to the implementation of the UN Declaration. NHRIs play a role at both the domestic and the international level in promoting implementation of the UN Declaration. At the international level, NHRIs can do the following:

- participate in sessions with the Human Rights Commission and highlight domestic implementation of the UN Declaration;¹⁹³
- participate during the UPR country report, referencing the domestic situation of Indigenous peoples' rights in relation to the standards set out in the UN Declaration;¹⁹⁴
- interact with treaty monitoring bodies and provide them with shadow reports that encourage interpretation of the treaty in line with the UN Declaration;¹⁹⁵
- contribute to the work of UN Special Rapporteurs, highlighting how the UN Declaration is, and is not, being implemented;¹⁹⁶

¹⁹² Carver, *supra* note 5 at 16.

¹⁹³ Guo, *supra* note 5 at 114; Haász, *supra* note 5 at 171; Linos & Pegram, *supra* note 5 at 1127.

¹⁹⁴ Linos & Pegram, *supra* note 5 at 1128.

¹⁹⁵ Carver, *supra* note 5 at 20; Linos & Pegram, *supra* note 5 at 1129; Reif, "Building Democratic Institutions", *supra* note 5 at 23; Reif, "Domestic Implementation", *supra* note 5 at 478.

¹⁹⁶ Carver, *supra* note 5 at 11.

- work with states to achieve sustainable development goals in a way that respects and promotes the rights of Indigenous peoples as recognized in the UN Declaration;
- connect with NGOs;¹⁹⁷ and
- bring complaints to international bodies on behalf of Indigenous peoples for violations of human rights, including the rights recognized in the UN Declaration.

At the domestic level, NHRIs can:

- use the UN Declaration to interpret basic domestic human rights legislation for complaints and any reports relevant to Indigenous peoples' rights, highlighting the content of the rights provided by the UN Declaration and expanding the scope of the rights available;¹⁹⁸
- use the UN Declaration to consider complaints and conduct investigations when there has been an alleged violation of Indigenous peoples' rights;¹⁹⁹
- monitor domestic legislation to ensure conformity with the UN Declaration,²⁰⁰ including proposing laws that give effect to the UN Declaration and identifying laws that are inconsistent with the UN Declaration;²⁰¹
- lobby governments to broaden the NHRIs' founding legislation to provide NHRIs with an explicit mandate to apply international law, including the UN Declaration;²⁰²
- advise the government on how to implement the UN Declaration, including assisting in the development of a national action plan;²⁰³

¹⁹⁷ Koo & Ramirez, *supra* note 5 at 1342.

¹⁹⁸ Carver, *supra* note 5 at 16; Reif, "Domestic Implementation", *supra* note 5 at 484.

¹⁹⁹ Guo, *supra* note 5 at 115; Reif, "Domestic Implementation", *supra* note 5 at 480.

²⁰⁰ Carver, *supra* note 5 at 7.

²⁰¹ Carver, *supra* note 5 at 17; Haász, *supra* note 5 at 169; Reif, "Building Democratic Institutions", *supra* note 5 at 21; Reif, "Domestic Implementation" *supra* note 5 at 486.

²⁰² Carver, *supra* note 5 at 7; Reif, "Building Democratic Institutions", *supra* note 5 at 19; Reif, "Domestic Implementation", *supra* note 5 at 483.

²⁰³ Haász, *supra* note 5 at 169.

- encourage the government to implement the UN Declaration;²⁰⁴
- promote public awareness of the UN Declaration through research and education,²⁰⁵ including assisting in building the capacity of Indigenous peoples to use the UN Declaration;
- use the UN Declaration, directly or indirectly, when bringing complaints forward to tribunals;²⁰⁶
- create a “best practices guide” for implementing the UN Declaration in the specific state context;²⁰⁷
- use the UN Declaration when engaging in domestic monitoring and reporting to domestic parliaments on human rights situations; and
- establish a dedicated Indigenous rights commissioner as was done by the AHRC and the NZHRC.

As demonstrated throughout this paper, NHRIs and provincial human rights institutions play an important role in persuading states such as Canada to implement the UN Declaration. While the work of NHRIs, such as the CHRC, is vital for the promotion and protection of human rights standards, including the UN Declaration at the domestic level, this paper has also demonstrated that NHRIs have an important role to play at the international level in promoting implementation of the UN Declaration. In both domestic and international arenas, it is important that NHRIs work alongside and in partnership with Indigenous peoples to achieve the goals of the UN Declaration.

204 Carver, *supra* note 5 at 11.

205 Guo, *supra* note 5 at 115; Reif, “Domestic Implementation”, *supra* note 5 at 501.

206 Reif, “Domestic Implementation”, *supra* note 5 at 510.

207 Reif, “Building Democratic Institutions”, *supra* note 5 at 21; Reif, “Domestic Implementation”, *supra* note 5 at 484, 486.

About CIGI

We are the Centre for International Governance Innovation: an independent, non-partisan think tank with an objective and uniquely global perspective. Our research, opinions and public voice make a difference in today's world by bringing clarity and innovative thinking to global policy making. By working across disciplines and in partnership with the best peers and experts, we are the benchmark for influential research and trusted analysis.

Our research programs focus on governance of the global economy, global security and politics, and international law in collaboration with a range of strategic partners and support from the Government of Canada, the Government of Ontario, as well as founder Jim Balsillie.

À propos du CIGI

Au Centre pour l'innovation dans la gouvernance internationale (CIGI), nous formons un groupe de réflexion indépendant et non partisan qui formule des points de vue objectifs dont la portée est notamment mondiale. Nos recherches, nos avis et l'opinion publique ont des effets réels sur le monde d'aujourd'hui en apportant autant de la clarté qu'une réflexion novatrice dans l'élaboration des politiques à l'échelle internationale. En raison des travaux accomplis en collaboration et en partenariat avec des pairs et des spécialistes interdisciplinaires des plus compétents, nous sommes devenus une référence grâce à l'influence de nos recherches et à la fiabilité de nos analyses.

Nos programmes de recherche ont trait à la gouvernance dans les domaines suivants : l'économie mondiale, la sécurité et les politiques mondiales, et le droit international, et nous les exécutons avec la collaboration de nombreux partenaires stratégiques et le soutien des gouvernements du Canada et de l'Ontario ainsi que du fondateur du CIGI, Jim Balsillie.

**Centre for International
Governance Innovation**

67 Erb Street West
Waterloo, ON, Canada N2L 6C2
www.cigionline.org

