

Briefing Paper: Updated & Revised Pawnee Nation DRIP Act of 2022.

Background for the revised PND RIP Act of 2022: As part of the Pawnee Nation’s public education process, on December 11, 2021, the Governing Documents and Intergovernmental Affairs Committees hosted a Tribal Member Forum on the proposed Pawnee Nation Declaration on the Rights of Indigenous Peoples Act (PND RIP Act). The forum supplemented prior informational and education efforts regarding this proposed legislation. The Forum produced great feedback from Tribal members and constructive dialogue with Pawnee Business Council members. In response to the Forum, the Governing Documents Committee revised the proposed legislation to address the concerns, feedback, and recommendations. The revisions do four things:

1. It strikes the original Section IV (Effective Date) to meet concerns about Nasharo Council approval.
2. It strikes the original Section VII.2 (the one-year review of all prior Pawnee laws & policies) to meet concerns about “wholesale” implementation of the U.N. Declaration. As a result, the revised Act is no longer a “wholesale” incorporation of UNDRIP into Tribal law. Instead, the Act partially adapts UNDRIP for prospective policy purposes only. This narrower scope is acceptable. Since our Nation has no history of violating human rights, there is no need to study and address past laws and policies so that body of law and policy remain unaffected.
3. It adds a new finding No. 8 to: (i) justify striking Section VII.2 (above); and (ii) make a finding on the need for a “moral compass” for future law & policy making. It is good policy to stride toward laws founded on justice and our basic humanity.¹
4. It adds new provisions to Section VII (Savings Clause) to address questions whether the Nasharo Council will get more power than the PBC by this legislation.

Finally, the Committee researched whether any other Tribal Nation has implemented the U.N. Declaration “wholesale” and, if so, whether it lost any federal funding as a result. The attached letter from Judge Bigler answers both questions: First, the Muscogee Creek Nation’s National Council unanimously adopted the entire UNDRIP in MCN TR 16-149 (2016), the Muscogee Declaration on the Rights of Indigenous Peoples (MDRIP). A copy of TR 16-149 is attached to his letter. Second, Judge Bigler states: “I have never heard of any concern about losing Federal funding. I think that would be problematic as the United States itself has adopted a policy of support for the Declaration.” As he mentions,

¹ Vine Deloria, Jr. observed in “Laws Founded in Justice and Humanity,” for law to have a positive influence in the lives of ordinary people, “it must have something to do with the feelings of justice, it must speak to our basic humanity, and it must give us common sense directions as to what behavior and beliefs are right and wrong.”

the United States endorsed the UNDRIP in 2010; so why would it strip funding from Tribes that do the same thing?

Recommendation: The Governing Documents Committee endorses the updated and revised Pawnee Nation Declaration of the Rights of Indigenous Peoples Act (PNDRIP Act) and recommends that it be enacted into law by the Pawnee Business Council. In support of this recommendation, the Committee provides the following updated Briefing Paper about the revised legislation:

1. What is the impact of the PNDRIP Act on the Pawnee Nation?

Answer: The PNDRIP Act does two things. First, it asks the United States government to implement the “minimum standards” of the United Nations Declaration on the Rights of Indigenous Peoples (“Declaration”) into federal law and policy. Federal implementation will strengthen legal rights necessary for the survival, dignity, and wellbeing of the Pawnee Nation and its citizens. Second, to support that request and establish statutory precedent, the PNDRIP Act enacts a prospective policy not to violate human rights. That policy envisions that future Tribal laws, rules, and regulations will conform to the standards of the Declaration. No change in our form of government will occur because of the policy, because the Act states:

VII. Savings Clause: Nothing in this Act (i) abrogates or derogates any Treaty entered into by the Pawnee Nation; (ii) effects or diminishes any rights recognized or affirmed by the Constitution of the Pawnee Nation; (iii) increases the power of any governmental body established under the Constitution or otherwise affects the constitutional relationship between the Pawnee Business Council and Nasharo Council; or (iv) in any way affects or waives the sovereign immunity of the Pawnee Nation.

Nor is the Pawnee Nation joining the United Nations or ceding our sovereignty to anyone. PNDRIPA’s central goal is to seek increased federal protection for important legal rights of our Nation and citizens. The revised Act is posted on the Nation’s website:

www.pawneenation.org/pn-governing-documents-committee

2. What are the benefits to Pawnee People of enacting the PNDRIPA?

Answer: Our Nation and members will benefit greatly if the standards of the U.N. Declaration are implemented by the United States. If the standards become federal law, that will better protect the survival, dignity, and wellbeing of the Pawnee Nation and its citizens. Here are examples of stronger legal rights for our Nation & citizens:

Human Rights protected by the Declaration: **Current Rights in Federal Law:**

Religious freedom, sacred sites

No First Amendment protection

Self-Determination & Self-Government	Congress & Courts can abolish at will
Land/Territories/Natural Resources	Discovery Doctrine = inferior land rights
Language	Once forbidden; today little funding
Public Media	Unaccountable to Native Americans
Education in our own language/culture	Not required by federal or state law
Equality & Non-Discrimination	Legal Racism flourishes in Federal law
Environmental rights	Inadequate homeland/habitat protection
Robust Cultural rights	Fails to meet Declaration's standards
Free Prior & Informed Consent	Inadequate consultation
Economic & Social Rights Protected	Poorest of the poor, gaps in medical care
Treaties & Agreements protected	U.S. violates treaties & agreements
Rights are based on notions of justice	Rights are from Law of Colonialism

For these reasons, the National Congress of American Indians and a growing number of Tribal Nations support UNDRIP implementation. NCAI's Resolution calls on the United States to implement UNDRIP, stating: "implementation of UNDRIP is critical for protecting and furthering the rights of Indigenous Peoples" and "Indigenous Nations and individuals will benefit greatly if the principles of UNDRIP are implemented." The Inter-Tribal Council of the Five Civilized Tribes resolution urges Federal implementation of UNDRIP, stating: "Tribal Nations will greatly benefit if the provisions of the Declaration are implemented by the United States." Those resolutions are posted on the Committee's website page.

FOR MORE INFORMATION on UNDRIP legal protections, consult:

1. Tribal Implementation Toolkit: [Tribal-Implementation-Toolkit-Digital-Edition.pdf \(narf.org\)](https://www.narf.org/wp-content/uploads/2013/08/Tribal-Implementation-Toolkit-Digital-Edition.pdf)
2. Native American Rights Fund UNDRIP information: [About the Declaration – The Implementation Project \(narf.org\)](https://www.narf.org/wp-content/uploads/2013/08/About-the-Declaration-The-Implementation-Project.pdf)
3. UNDRIP guide for youth: [un-adolescents-guide2013.pdf \(narf.org\)](https://www.narf.org/wp-content/uploads/2013/08/un-adolescents-guide2013.pdf)

3. How much will it cost to implement PNDRIPA? What's the return on that investment?

Answer: No new costs, yet huge benefits will be gained with stronger legal rights.

4. Why would the Pawnee Nation want to bring its government under the U.N. since we are not a member nation?

Answer: PNDRIPA does not bring the Pawnee Nation under the jurisdiction or thumb of the U.N., nor cede our sovereignty to the U.N.

5. Why would PBC legislate “massive changes” to our government, since U.N. has no authority, and the Declaration is not legally binding?

Answer: No “massive changes” will take place under the PNDRIP Act, as explained in answer to Question No. 1. The U.N. Declaration is not legally binding on our Nation, but if we want its important benefits, we must be willing work with other Tribal nations to coax the Federal government to implement Declaration’s principles into federal law and policy. Native American rights are never freely given; they must be worked for, earned, then vigilantly protected. In that regard, our Pawnee ancestors have always been ready to take a stand when it comes to protecting the Nation and defending the people and their way of life. Two generations ago, Pawnee leaders and elders fought for new laws to protect the graves of our ancestors and repatriate Pawnee dead for proper reburial. Today, advocating for better Federal protection of our Indigenous rights under UNDRIP is the challenge of this generation.

6. Do the Declaration or PNDRIP Act have any potential implications on our Federal relationship?

Answer: The Treaty relationship between our Nation & United States remains the same, as stated in **Section VII (Savings Clause)**. After U.N. standards become federal law, the U.S. can no longer violate Pawnee treaties, self-determination, self-government, or other Indigenous rights at will. As a result, we will enjoy a stronger Nation-to-Nation relationship founded on more reliable legal rights that better protect our sovereignty & way of life.

7. What will Tribal members gain?

Answer: Stronger legal rights and a stronger Nation. Also, if Pawnee social, economic, housing, education, medical, and environmental needs are viewed by the U.S. as “human rights,” our social ills and needs are more likely to improve.

8. What additional rights does the Declaration provide for Pawnee people that they do not already enjoy as U.S. or Tribal citizens?

Answer: See, answer to Question No. 2.

9. Since no Tribe has implemented the Declaration into their government,

- * Why is implementation being proposed by PBC?
- * Is this a response to a current need, or will of the people?
- * What background has taken place to pave the way for PBC implementation?

* Is the AG Act part of the implementation?

*How are these changes addressed or provided for under our Constitution?

Answer: The premise of this question is erroneous: Several Tribal nations already have various kinds of laws in place that support and incorporate the Declaration. And there is a national Tribal & intertribal push to pressure the Federal government to implement the Declaration. See, (1) the MCN legislation discussed above; (2) the NCAI resolution; and (3) the Inter-Tribal Council of the Five Civilized Tribes resolution. Pawnees should do our part and join these efforts to strengthen Tribal rights by enacting the PND RIP Act, which responds to a current need: *We need stronger legal rights for our Nation & citizens.*

Over the past months, relevant Committees undertook extensive background work for developing this proposed legislation, including outreach to Tribal members. At this stage, the Governing Documents Committee and Intergovernmental Affairs Committee believe that the updated PND RIP Act serves the best interests of the Nation and its citizens. Along the way, elected Pawnee leaders--including Pawnee Chiefs on the Nasharo Council--have been appraised of the contents of UNDRIP & the PND RIP Act; have considered the Nation's need for stronger legal rights; have considered the impact of PND RIP A on our government, Constitution, and laws; and they understand the need to reform and strengthen Federal Indian law. Finally, the proposed Attorney General Act is not part of implementing the Declaration and has nothing to do with PND RIP A.

Under our Constitution, the Pawnee Business Council (PBC) is the lawmaking body for the Nation. For all the above reasons, the proposed PND RIP A legislation is ready to be duly considered by the PBC for enactment into law, with the Nasharo Council support.

Thank you,

--PBC President Walter Echo-Hawk, Co-chair, Governing Documents Committee, and ex-officio member, Intergovernmental Affairs Committee.

-- Councilwoman Cynthia Butler, Chair, Governing Documents Committee.

-- Councilwoman Dawna Hare, Chair, Intergovernmental Affairs Committee.