

Compilation of submissions to IPadvisers email address

Updated as of 20/05/2016 – 1:15pm

Subject: The proposals how to enable participation of Indigenous peoples' in UN

Proposals on how to enable participation of Indigenous peoples' in the UN

Sámi Education Institute is specialized to the Sámi culture, languages and livelihood, Our institute provides education and run development projects to support Sámi traditions as reindeer herding, cultural sensitive nursing and Sámi handicrafts (www.sogsakk.fi).

1. Education

Implementation of rights for equal opportunities for education for all Indigenous peoples must be monitored by UN Permanent Forum for Indigenous Issues. There must be an own section for indigenous education which is closely connected with UNESCO (Global Education Monitoring Report 2015).

In Finland 70% of Sámi children are living outside of Sámi area. They are not getting any education in Sámi language and culture or even Sámi language education. Although Finnish Constitution provides and guarantees rights for the own culture and language for Sámi peoples. There are no concrete acts to improve the situation in Finland at the moment.

Indigenous peoples need a permanent mechanism to monitor the education. Not only the result of how many hours, how many pupils/ students are getting the education but also the indicators and measurements of how the education is organized and how it is takes into consideration the Indigenous peoples own traditions.

There are some positive examples also. Sámi Education Institute as an Indigenous organization has had a great position to implement the UNDRIP in daily bases for example in Sámi reindeer herders education. We have adapted some of the Sámi traditional ways of land use and herding methods to the reindeer herder's curricula. We are also trying to provide the education according of our own cultural methods of teaching and learning. By using the cultural sensitive measurements for auditing our students, this gives us a better view of the effect of the education. For example, we are giving 50% of the education on real locations – young reindeer herders are working with their own reindeer more than half of the 3 – year degree. We are monitoring and making the tests and auditing of their improvement of the studies also on real locations, real work. The indicators are for example how well they recognize their own reindeer (ear marks), how well they recognize different types of reindeer in order to make the success, how well they know about their own grazing areas, how their can plan how to use the grazing are etc.

2. Land rights

There is a urgent need of a permanent monitoring system in the home areas and frequent meetings with the State representatives and NGO's and local communities with UN bodies. Here is important that other organizations like Indigenous education organizations are participating the meetings.

In Finland Sámi people have no representative in the Finnish Parliament. It has meant that the important issues like land rights are always handled by the terms of the majority Finnish parliament members and it has had consequences for example of non-ratification of the ILO 169.

The most recent example of majority power, in the Finnish Parliament, is handling of the law on the Finnish Forests and Parks Service (Metsähallitus) was on the 18 March 2016, in the Finnish Parliament. It shows a lack of consultation and means reduced protection for Sámi peoples' rights. This law is crucial for the future of Sámi traditional livelihood, especially reindeer herding, fishing and hunting. The law bill draft does not include any more even a mention about Sámi peoples' rights to traditional livelihood and resources. The Finnish parliament did not give any possibility to the Sámi Parliament or any other Sámi body to negotiate about the law before it was taken to the Finnish Parliament, on the 18. March 2016.

3. Permanent mechanism for accreditation in UN meetings

We need a mechanism to give rights to the NGOs that are not officially recognized by their own home countries. Usually, these NGOs are accused of some misconduct, in many different ways, by their own national governments and their voice is not heard even in their own countries. Another problem is the NGOs and organizations, which are not really representing Indigenous peoples even though it seems like they are.

One possible solution would be to have sponsorship/recommendation from a recognized body by UNPFII and Indigenous people's organizations.

With best greetings,

Liisa Holmberg

rector

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WEST PAPUA INTEREST ASSOCIATION

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WPIA
INTERNATIONAL YW19J

(I.I.\\

Jayapura, 29 March 2016

Ref.No:02/WP-IP/11//16

President of the United Nations General Assembly and
Indigenous Peoples Adviser to PGA

Dear Sir/Madam,

In this opportunity, I as the representative of West Papua Interest Association representing indigenous peoples of West Papua inside the country of Indonesia would like to provide some of the input for the electronic consultation on the participation of indigenous peoples at the United Nations.

A. Procedures and modalities that will create meaningful participation of indigenous peoples and effective:

- Genuinely indigenous peoples representatives is an indigenous person and it is derived from grassroots communities or living with grassroots communities on their indigenous land and territories. Representative has been participation in the UNPFII and EMRIP session, and contributing to the questionnaire that request by the secretariat of the UNPFII.

- And the issue raised by the indigenous peoples organization representative at the international forum is highly supported by indigenous peoples in their land and territories.

B. The criteria for determining the eligibility of indigenous peoples' representatives for accreditation such as:

- The genuinely representative based on the land and territories of indigenous peoples, and within the organization shall consist of several tribes. Indigenous peoples of their organization must have a board and have a number of representatives in some areas and have long been 5-10 years in the society.

- The Representative has participated in EMRIP session in Geneva, UNPFII session in New York and follow the session of the Human Rights Council and the Universal Periodic Review.

- Representative living amid the indigenous peoples, see, witness and feel the suffering experienced by indigenous peoples in that area or country.

- Have a passport of a country where indigenous peoples live or have passport from neighboring countries adjacent to their territory.

C. The nature and membership of the Board to determine appropriateness of Representative for accreditation:

- The organization of indigenous peoples are genuinely indigenous peoples organization and based on the land and territories of indigenous peoples. And that organization has had representatives and board members and have a number of members consisting of indigenous peoples in both urban and indigenous peoples those who are in the remote areas.

- To ensure this, it should be known by the UN Agency in the Country, or province by sending messengers to do a visit to the place or address where the Governing Body of the organization of indigenous peoples present.

D. The details of the process, including the information necessary to be submitted to obtain accreditation as representatives of indigenous peoples;

- Representatives of indigenous peoples must have a passport of a country where indigenous peoples live.

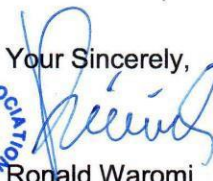
- Representative genuinely indigenous peoples who live with and feel the suffering experienced by indigenous peoples, and receive a recommendation from their organization in the form of letters and also the recommendations from indigenous peoples in the form of traditional customs objects and culture such as; Headdress, Traditional bag, Necklace, stone axe or traditional drums, traditional music, paddle and etc that have a meaning as a mandate from indigenous peoples to voice their aspirations of indigenous peoples at international forums.

- Must have photos along with indigenous peoples, to prove that the representative and indigenous peoples over their lands and territories.

Thank you very much and I hope this input for electronic consultation might be useful. And for further information about our organization can be visit this website:

www.wpiapapua.wix.com.

WEST PAPUA INTEREST ASSOCIATION
INDIGENOUS PEOPLE
PAPUA

Your Sincerely,

Ronald Waromi

Chairman and Coordinator of WPIA

Participation of Indigenous Peoples' Institutions at the United Nations

8 April 2016

Response to the invitation from the President of the United Nations General Assembly:

Joint written submission by the following Arctic Indigenous Peoples organizations and institutions: Inuit Circumpolar Council - Greenland, Saami Council, Sami Parliament of Finland, Sami Parliament of Norway, Sami Parliament of Sweden, and Sami Parliamentary Council

Introduction

The World Conference on Indigenous Peoples (A/RES/69/2) represents a milestone in the United Nations efforts to promote and protect the rights of Indigenous Peoples. Through the unanimous adoption of the Outcome Document, Member States reaffirmed their solemn commitment to respect, promote and advance, and in no way diminish the rights of Indigenous Peoples, and to uphold the principles of the UN Declaration on the Rights of Indigenous Peoples (OP 4).¹

The World Conference requested the General Assembly to address and resolve current obstacles for participation of Indigenous Peoples' representatives in meetings of United Nations bodies on issues affecting them (OP 33). This commitment by Heads of States and Governments, ministers and other high-level representatives of Member States, is a direct response to the provisions of the UN Declaration on the Rights of Indigenous Peoples (Declaration), and Indigenous Peoples' call for a revision of the United Nations' rules of participation for Indigenous Peoples' self-government institutions.

The Global Indigenous Preparatory Conference for World Conference on Indigenous Peoples, held in Alta, Norway, from 10 – 12 June 2013, unanimously recommended that Indigenous Peoples be provided recognition as Indigenous Peoples and Nations, consistent with the provisions of the Declaration (Theme 2: OP 3).² Moreover, the Global Indigenous Preparatory Conference called for, at a minimum, *permanent observer status for Indigenous Peoples* within the United Nations system enabling Indigenous Peoples' direct participation through their own governments and parliaments, as well as traditional councils and authorities (Theme 2: OP 10).

We fully support the call for permanent observer status for indigenous governments and parliaments, and traditional councils and authorities.

Indigenous Peoples' right to participate in decision-making in matters which affect their interests and rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own their own indigenous decision-making institutions, is one of the most fundamental principles in the Declaration (Article 18). The Declaration provides that the organs and specialized agencies of the United Nations system shall contribute to the full realization of the provisions of the Declaration, including through the establishment of procedures ensuring Indigenous Peoples' participation on issues affecting them (Article 41). These provisions reflect the UN General Assembly's recognition that the current UN rules for participation and engagement do not meet the rights and needs of Indigenous Peoples, and that these rules fall short of recognizing Indigenous

¹ Outcome Document of the high-level plenary meeting of the General Assembly, known as the World Conference on Indigenous Peoples, September 2014

² Alta Outcome Document, June 2013

Peoples as self-determining peoples. As self-determining peoples, Indigenous Peoples must be accorded distinct status as peoples.

The Declaration states that Indigenous Peoples have the right to the full enjoyment of all human rights and fundamental freedoms, including the right to self-determination, as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. The Declaration also establishes that Indigenous Peoples are equal to all other peoples and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity (Articles 1, 2 and 3).

The range of provisions in the Declaration³ relating to Indigenous Peoples' participation in decision-making highlights the importance of the right to participate in decision-making.⁴ The right to participate in decision-making is also enshrined in a number of the core regional and international human rights conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of Racial Discrimination, and the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.⁵ The right to participate in decision-making is closely linked to Indigenous Peoples' right to self-determination. Indigenous Peoples participation in decision-making is also of fundamental importance in any effort to redress the legacy of marginalization and exclusion of Indigenous Peoples, and should be an integral component in any serious attempt in achieving reconciliation between States and Indigenous Peoples.

In the following sections, please find our response to the questions presented by the President of the General Assembly, and his team of advisers, following the first informal launch briefing on the process on 7 March 2016.

Procedures and modalities that will make participation of Indigenous Peoples' representatives meaningful and effective

We are of the view that a *new observer category* should be created for Indigenous Peoples, at the level of the General Assembly, allowing for Indigenous Peoples' self-government institutions, including indigenous governments, parliaments, traditional councils and authorities, to participate independently, through representatives chosen by themselves in accordance with their own procedures.

The Declaration recognizes that Indigenous Peoples have the right to maintain and develop contacts, relations and cooperation, including activities for cultural, political, economic and social purposes, with other peoples across borders (Article 36), and that the United Nations shall establish procedures ensuring participation of Indigenous Peoples at the United Nations (Article 41). These provisions affirm that Indigenous Peoples' right to self-determination also encompasses an external dimension; their right to effective international engagement, including at the United Nations.

Indigenous Peoples' self-government institutions, including the Sami Parliaments of Finland, Norway and Sweden, are currently prevented from independently participating in the work of the United Nations, beyond the annual sessions of the Permanent Forum on Indigenous Issues (UNPFII) and the

³ Articles 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 38, 40 and 41

⁴ Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Progress report on the study on indigenous peoples and the right to participate in decision-making*, A/HRC/EMRIP/2010/2, Chapter I and II.

⁵ *Ibid*

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) respectively. The existing UN rules for participation of non-state entities prevent Indigenous Peoples' self-government institutions to independently take part in the work of the United Nations beyond the mentioned UN bodies. In our view, it is of crucial importance that Indigenous Peoples' self-government institutions are allowed to take part in the work of the United Nations. This will also strengthen the United Nations ability to effectively address and resolve issues affecting Indigenous Peoples.

In order to demonstrate the negative impacts of the current rules for participation on Indigenous Peoples' self-government institutions' possibility to participate in the work of the United Nations, we will use the situation of the Sami people as an example:

The *Sami* is the recognized indigenous people of Finland, Norway, Sweden and the Kola Peninsula in the north-western part of the Russian Federation. The *Sami* is one people residing across the national borders of four countries, with their own distinct identity, language, culture, social structures, traditions, livelihoods, history, and aspirations. In Finland, Norway and Sweden respectively, the Sami autonomy and self-government is sought implemented through the respective Sami Parliaments. The Sami Parliaments are officially recognized as such through national legislation. The members of the Sami Parliaments are elected by and among the Sami in the respective countries.

The Sami Parliaments have the right to, within the limits of the respective national legislations, to manage a substantial share of public affairs under their own responsibility and in the interest of the Sami people. It is also recognized that the Sami Parliaments represent the Sami at the international level, e.g. Section 6 of the Sami Act in Finland, establishes that the Sami Parliament represents the Sami in matters affecting them at both the national and international levels. Since 2011, the Sami Parliament of Norway has had an international representative in New York, authorized to represent the Sami Parliament of Norway in all such matters which affect the rights and interests of the Sami people in Norway, and fall within the mandate of the Sami Parliament.

In order to strengthen their capacity to address cross-border issues affecting the Sami people, the three Sami Parliaments have established a joint cooperative body, the Sami Parliamentary Council. The members of the Parliamentary Council are appointed by the three Sami parliaments from among the representatives elected to each of them through public elections, by and among the Sami people in the respective countries. The Sami in the Russian Federation do not have their own publically recognized Sami Parliament. However, the Sami in Russia have been granted an observer and participatory status in the Sami Parliamentary Council. The Parliamentary Council addresses cross-border and international issues affecting the Sami people.

The Sami Parliaments are fundamentally different from non-governmental organizations, including as far as constituency, purpose, mandate and organization are concerned. In the Arctic region, there are also a number of indigenous non-governmental organizations, including the Inuit Circumpolar Council and the Saami Council, which both are in consultative status with the UN Economic and Social Council. These two organizations have been among the key Indigenous Peoples' actors at the United Nations for several decades. They will continue to be proactively involved in the future work of the United Nations, but there is also a need for opening up the United Nations for the independent participation of our self-government institutions.

Beyond the annual sessions of UNPFII and EMRIP respectively, Indigenous Peoples' self-government institutions, including the Sami Parliaments, can only participate in the activities of the United Nations as part of the respective State delegations. In some instances this excludes the Sami

Parliaments from taking part in the work of the United Nations in matters affecting the Sami people, including in situations where the Sami Parliament concerned has not received an invitation to be part of the governmental delegation, and in situations where the Sami Parliament concerned, due to various reasons, including substantive and/or political disagreement, have decided not to be part of the governmental delegation. This unacceptable situation will remain for the Sami Parliaments, and other Indigenous Peoples' self-government institutions, unless the United Nations makes its rules for participation compatible to the rights and reality of Indigenous Peoples worldwide.

We are of the view that the realization of Indigenous Peoples' right to participate in decision-making at the multilateral level is of crucial importance; it is a fundamental right by itself, and vitally important for their enjoyment of other human rights. At the practical level, multilateral decision-making processes are more important for Indigenous Peoples than ever before, because of the increasingly interconnected and globalized world, where multilateral decisions have immediate and direct impact on Indigenous Peoples and their communities.

We are of the view that it is extremely difficult, if at all possible, to reach acceptable substantive outcomes in multilateral decision-making processes affecting Indigenous Peoples, in the absence of a due process that fully involves Indigenous Peoples' self-government institutions. An important lesson learned from the negotiation process on the Declaration, adopted in 2007, and the Outcome Document of the World Conference on Indigenous Peoples, adopted in 2014, is that participatory rights and substantive outcomes are inextricably intertwined. These experiences also demonstrate that the inclusion of Indigenous Peoples, beyond indigenous non-governmental organizations, can lead to exceptionally positive results, when the aims and purpose of the participants are in conformity with the spirit, purposes and principles of the United Nations.

Therefore, we strongly believe that the United Nations should build upon these positive experiences, by adopting permanent accreditation procedures for Indigenous Peoples' self-government institutions, which are consistent with the standards established by the United Nations for acknowledging and respecting the rights of Indigenous Peoples, including Indigenous Peoples' right to self-determination. Indigenous Peoples' self-government institutions should be permitted to participate independently at various levels and sectors of the United Nations, including the General Assembly, the Economic and Social Council, the Human Rights Council, including its Universal Periodic Review process, and relevant meetings of UN human rights treaty bodies.

In his report, entitled ways and means of promoting participation at the United Nations of Indigenous Peoples' representatives on issues affecting them (2012), the UN Secretary-General concludes that to the extent that it has been permitted to date, Indigenous Peoples' participation at the United Nations has been a positive experience. It has enabled Indigenous Peoples who have been historically excluded to work together peacefully and in partnership with States to advance their issues and rights. The Secretary-General acknowledges that it has been a process of mutual trust-building, premised on equality and equity among stakeholders, and has led to fruitful outcomes and greater commitments by Indigenous Peoples, States and the United Nations system to strengthen recognition and respect for Indigenous Peoples' rights. Moreover, the Secretary-General expresses that it is hoped that this spirit of openness and continuing collaboration with Indigenous Peoples will be improved by further enhancement of procedures to enable Indigenous Peoples' participation in all relevant work of the United Nations, in a way that realizes, respects promotes and protects their rights under the United

Nations Declaration on the Rights of Indigenous Peoples and other relevant international human rights instruments (A/HRC/21/24).⁶

In his progress report on the implementation of the Outcome Document of the World Conference on Indigenous Peoples (2015), the Secretary-General reiterates observations and conclusions made in his report on ways and means of promoting participation at the United Nations of Indigenous Peoples' representatives on issues affecting them. In the progress report, the Secretary-General recognizes that there is broad agreement among Indigenous Peoples and Member States that consultative status as non-governmental organizations with the Economic and Social Council is not appropriate for Indigenous Peoples' representative bodies, many of which have their own government or governance institutions. Moreover, the Secretary-General points out that inclusion of Indigenous Peoples' representatives in governmental delegations to United Nations meetings do not address the specific status of Indigenous Peoples' representative bodies. The Secretary-General encourages Member States to move forward on developing new measures to enable the effective participation of Indigenous Peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, through representatives chosen by themselves in accordance with their own procedures (A/70/84-E/2015/76).⁷

We agree with the views expressed by the UN Secretary-General, and we are of the opinion that the adoption of appropriate accreditation procedures for Indigenous Peoples' self-government institutions is a matter of great urgency, as too many Indigenous Peoples are excluded from participating in UN decision-making processes affecting their lives and rights.

Operative Paragraph 33 of the Outcome Document of the World Conference, and subsequent resolutions in the General Assembly, including 3rd Committee resolution A/RES/70/232 (OP 19), provide the General Assembly with an excellent opportunity to prove in practice that it is able and willing to implement one of the underlying principles of the Declaration, by establishing a permanent accreditation system for Indigenous Peoples' Self-government institutions, without prejudice to those Indigenous Peoples' organizations that are organized and/or accredited as non-governmental organization under the relevant ECOSOC rules.

New accreditation procedures for Indigenous Peoples' self-government institutions should not be construed as diminishing or extinguishing rights Indigenous Peoples have now or may acquire in the future, or adversely affect rights of Indigenous Peoples, as distinct peoples and nations, pursuant to international instruments, including international conventions, recommendations or customs, or pursuant to treaties, agreements and other constructive arrangements concluded between Indigenous Peoples and States or their successors.

Observer Status

There are no legal obstacles preventing the General Assembly granting Indigenous Peoples observer status in the Assembly. The question on whether such status is granted to Indigenous Peoples is thus contingent on whether Member States possess the necessary political will to do so.

Nothing in the Charter of the United Nations or the Rules of Procedures for the General Assembly prevents the General Assembly from granting Indigenous Peoples' permanent observer status. The granting of observer status is not addressed in the Charter. Participation in the General Assembly as

⁶ A/HRC/21/24, Chapter VII. Conclusions, Paragraph 66

⁷ A/70/84-E/2015/75, Paragraphs 35 and 48

an observer has developed through practice. The first observer was recognized in 1946.⁸ Since then, there has been a steady increase in number of entities with observer status.

Observer status is granted by a General Assembly resolution, normally based on the recommendation of the Sixth Committee. Admitted observers have a standing invitation to participate in the sessions of the General Assembly. Currently, four categories of permanent observers can be distinguished: (1) non-member states, e.g. the Holy See and State of Palestine; (2) entities with a permanent observer mission at UN Headquarters in New York. To date, only Palestine has been in this category, but Palestine is now regarded as a non-member State observer; (3) other entities with a permanent mission in New York, e.g. the International Committee of the Red Cross; and (4) intergovernmental organizations, with or without a permanent observer mission in New York, e.g. the European Union. Indigenous Peoples would not naturally fit into any of the existing four categories, so an *additional observer category* for Indigenous Peoples will need to be created.

In an attempt to limit a proliferation of observers, the General Assembly has on several occasions highlighted that the granting of observer status in the General Assembly should be confined to entities whose activities cover matters of interest to the Assembly. In light of the fact that the General Assembly in 2007, with an overwhelming majority adopted the UN Declaration on the Rights of Indigenous Peoples, one should believe that the rights, needs and aspirations of Indigenous Peoples are of great interest to the Assembly; a declaration is an instrument to which the Assembly resorts to only in very rare cases relating to matters of major and lasting importance, where maximum compliance is expected.

Not all observers have been granted the same participatory rights. The Holy See and Palestine can participate in all aspects of the General Assembly's work, but without having the right to vote or to table resolutions. The participation of other observers is more restricted; they can speak in formal meetings but are not always invited to participate in closed meetings. They cannot co-sponsor resolutions and cannot raise points of order, nor do they have the right of reply; Indigenous Peoples' self-government institutions should, as a minimum, be granted a right to participate which is similar to the participatory rights of the vast majority of current observers.

The question of whether an entity should be granted observer status is normally first considered in the Sixth Committee, before it is considered in the plenary of the General Assembly. Requests by entities for the granting of observer status in the General Assembly are considered individually. In the case of Indigenous Peoples, due to the large number and diversity of Indigenous Peoples worldwide, it would be logical for the General Assembly to consider the question of observer status for Indigenous Peoples in two phases. Initially, one would need a general resolution in the General Assembly, by which it decides that Indigenous Peoples' institutions that meet the specified criteria are eligible to request for observer status. Individual requests for observer status should be considered on an individual basis in light of the criteria set out in the overall General Assembly resolution.

Criteria for determining the eligibility of Indigenous Peoples' representatives for accreditation as such

We are of the opinion that there needs to be a distinction between the eligibility criteria for (1) the granting of observer status to individual Indigenous Peoples' self-government institutions, and (2) those institutions eligibility to designate their own representatives.

⁸ Switzerland

With regard to the eligibility of individual Indigenous Peoples' self-government institutions to be granted observer status, we are of the opinion that the question of eligibility needs to be approached at two different levels: (1) Whether the group or people concerned, requesting observer status, is an Indigenous People, taking into account the different terminologies applied in various regions/countries. This could include, but not limited to, the criteria reflected in the Cobo-definition⁹, and the statement of coverage of the ILO Convention No. 169,¹⁰ and No. 107.¹¹ (2) Whether the Indigenous Peoples' institution concerned is eligible for such status. In situations of explicit or implicit recognition of an Indigenous People, including its institutions, this should be a fundamental criterion in considering their request for an observer status.

As far as Indigenous Peoples self-government institutions' accreditation of their own representatives to the United Nations is concerned, there should be no UN criteria interfering with Indigenous Peoples internal designation procedures. In accordance with Article 18 of the Declaration, Indigenous Peoples have the right to participate in decision-making, through representatives chosen by themselves in accordance with their own procedures.

Nature and membership of a body to determine the eligibility of Indigenous Peoples' representatives for accreditation

The accreditation of Indigenous Peoples' institutions under the new arrangement should be separate and independent from any UN existing bodies or mechanisms, e.g. this task should not be assigned to the Permanent Forum on Indigenous Issues, Expert Mechanism on the Rights of Indigenous Peoples, or the ECOSOC NGO-committee on accreditation. The NGO-Committee should not be involved in the accreditation process, as Indigenous Peoples' self-government institutions are not non-governmental organizations. There need to be a clear distinction between non-governmental organizations and Indigenous Peoples' self-government institutions. EMRIP and the Permanent Forum are both advisory expert bodies dealing with thematic issues, and thus not appropriate bodies to consider representation of Indigenous Peoples.

We propose that a new and independent body, e.g. a working group under the General Assembly, be established and assigned the responsibility of considering requests from Indigenous Peoples' institution for granting of observer status, composed by equal number of representatives of Member States and Indigenous Peoples, appointed by the President of the General Assembly. The working group could be mandated to make the final decision on requests for observer status, or its mandate could be limited to providing a recommendation to the General Assembly, through the President of the Assembly. In the latter situation, the final decision on whether an individual organization should be granted observer status rests with the General Assembly.

Details of the process, including the information required to be submitted to obtain accreditation as an Indigenous Peoples' representative

See above.

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⁹ José Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, Chapter V, E/CN.4/Sub.2/1982/2/Add.6: http://www.un.org/esa/socdev/unpfi/documents/MCS_v_en.pdf

¹⁰ ILO Convention No. 169 (1989), Article 1 (1) (b) and (2): http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

¹¹ ILO Convention No. 169 (1957), Article 1 (1) (b): http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no:12100:p12100_instrument_id:312252:no

Electronic consultation regarding participation of indigenous peoples at the United Nations – Swedish response

- Sweden welcomes a discussion on how to enable and strengthen participation at the United Nations of indigenous peoples' representatives. It is important to ensure that indigenous peoples can influence issues affecting them – which are not limited to human rights but also include aspects of development, peace and security.
- Issues relevant to indigenous peoples are often addressed in general United Nations forums, beyond the bodies specifically focused on indigenous issues, such as the Economic and Social Council, the Human Rights Council and meetings of the General Assembly and its committees. In light of this, Sweden supports the adoption of a decision setting out general procedures that would apply to indigenous peoples' representatives' participation at United Nations meetings.
- The cooperation between the United Nations, its membership and Indigenous Peoples in the run-up to the World Conference on Indigenous Peoples in 2014 paved good ground for translating the commitments in the Outcome Document into concrete measures.
- In addition to existing participatory rights of Indigenous Peoples, Indigenous Peoples' representatives and institutions that are constitutionally, legally and/or politically acknowledged should have the right to participate in meetings of relevant UN bodies on issues affecting them. Procedures could be based either on existing procedures to the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues, or on existing procedures to accredit non-governmental organisations. From Sweden's point of view the minimum starting point for the discussions is that this participatory status should not be below the one given to NGO's having ECOSOC consultative status.
- Sweden will promote setting out general procedures, also given that indigenous peoples' representatives vary in legal and political recognition by states and that they are organized not only as NGO's but also as other differing forms of non-state organizations and agencies.
- The Report of the Secretary-General on the Ways and Means of promoting participation at the United Nations of indigenous peoples' representatives have identified a number of good practices within the UN system to draw from (A/HRC/21/24).
- Member States could consider draw from positive practices that have been established for other categories of participants in certain context, for instance the accommodation of contributions by national human rights institutions in the sessions of the Human Rights Council, as suggested in the Secretary-General's report on the Ways and Means of promoting participation at the United Nations of indigenous people's representatives.
- Criteria for determining the eligibility of indigenous peoples' representatives for accreditation are of great importance and a matter of principal. From Sweden's point of view, emphasis needs however to be on inclusion and participation. It is also of importance that this process respects the right of indigenous people to determine the structures and to select the membership of their institutions in accordance with their own procedures.
- Sweden suggests that the possibility of the Permanent Forum on Indigenous Issues and the secretariat of the Expert Mechanism to identify criteria is explored.

Subject: indigenous participation

Greetings,

Yamasi People recommends that indigenous governments make up the committee determining criteria for participation at the United Nations, taking turns beginning with indigenous governments that have already participated at the UN. They should require description of the organization as an indigenous non-governing or governing organization. The eligibility body should consider how the organization will build peace and effective, open accountable institutions for the UN. The inclusivity and human rights record of the indigenous organization should be given to the committee to see how they will build peace. The organization should tell the committee how their participation will uphold and promote UN treaties and conventions.

Peace,

Lori Johnston, Leader

Yamasi Peopple

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March 30, 2016

Enabling the Participation of Indigenous Governing Institutions at the United Nations

Written contribution to inform the electronic consultation as called for in A/RES/70/232

The Indian Law Resource Center is a non-profit legal and advocacy organization established in 1978 by American Indians. The Center is dedicated to protecting the rights of Indian and Alaska Native nations and other indigenous peoples throughout the Americas. The Center, among other work, has supported indigenous nations and organizations in the negotiation of the Declaration on the Rights of Indigenous Peoples and in the World Conference on Indigenous Peoples. The Center has been in consultative status with the Economic and Social Council since 1981.

The following observations and proposals of the Center are intended to clarify the need for a new status particularly for **indigenous governing institutions** at the United Nations and to assure that the new status, the necessary standards for accreditation, and the rules for participation will permit indigenous governing institutions to participate and contribute effectively in the work of the United Nations.

I. The need for a new status for indigenous governing institutions

Indigenous governing institutions are not presently recognized by the United Nations system in any formal sense. Such institutions are entirely distinct from voluntary non-governmental organizations, including those indigenous organizations organized as civil society organizations that have received consultative status from the Economic and Social Council.

The United Nations, through the Outcome Document of the World Conference on Indigenous Peoples, has recognized the important distinction between voluntary indigenous organizations and indigenous governing institutions, as well as the need to remedy the situation by enabling indigenous governing institutions to participate in the work of the United Nations.

The World Conference on Indigenous Peoples was held, in part, "to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples,"¹ and it resulted in an outcome document² that included a commitment to consider "ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any specific proposals made by the Secretary-General. ."³ Following the World Conference, the General Assembly outlined a process to enable the participation of indigenous representatives and institutions (indigenous governing institutions) in the work of the United Nations in its annual resolution on the rights of indigenous peoples.⁴

Many international law standards relating to the rights of indigenous peoples, such as those established under the UN Declaration, apply to indigenous peoples and their governments or other decision-making institutions, not to voluntary indigenous organizations constituted as NGOs or civil society organizations. Article 18 of the Declaration states the right of indigenous peoples to participate in decision-making in matters affecting their rights through representatives chosen by themselves in accordance with their own procedures. Articles 33 and 34 further recognize the right of indigenous peoples to determine, promote, develop, and maintain their institutional structures and membership in accordance with their own procedures. Article 19 recognizes the duty of states to consult and cooperate with indigenous peoples through indigenous peoples' governing or representative institutions before adopting or implementing measures that may affect them. Any process to enable the participation of indigenous governing institutions at the United Nations must promote respect for and full application of all of these provisions of the Declaration.

Past reports of the Secretary-General, the Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples, and the Permanent Forum on Indigenous Issues provide further evidence of the need for a new status for indigenous governing institutions to participate in the work of the United Nations.

In 2011, the Expert Mechanism recommended: "The United Nations should, in accordance with the UN Declaration on the Rights of Indigenous Peoples, establish a permanent mechanism or system for consultations with indigenous peoples' governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations."⁵

In 2012, at the request of the Human Rights Council,⁶ the Secretary-General prepared a report on the ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives, recognizing that such institutions are "not always organized

1 G.A. Res. 65/198, 1]8, U.N. Doc. A/RES/65/198 (Dec. 21, 2010).

2 G.A. Res. 66/295, 1]119-10, U.N. Doc. A/RES/66/295 (Sept. 17, 2012).

3 G.A. Res. 69/2, 1]33, U.N. Doc. A/RES/69/2 (Sept. 22, 2014).

4 G.A. Res. 70/232, 1] 19, U.N. Doc. A/RES/70/232 (Dec. 23, 2015).

5 The Expert Mechanism on the Rights of Indigenous Peoples, *Final report of the study on indigenous peoples and the right to participate in decision-making*, 1]36, delivered to the Human Rights Council, U.N. Doc. A/HRC/18/42 (August 17, 2011).

6 1]13, HRC/RES/18/8 (29 Sept. 2011).

as non-governmental organizations."⁷

In 2015, at the request of the General Assembly in its World Conference Outcome Document, the Secretary-General prepared a second report on the topic, recommending states "move forward on developing measures to enable the effective participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, through representatives chosen in accordance with their own procedures."⁸ Also in 2015, the Permanent Forum on Indigenous Issues recommended that the General Assembly establish "a new procedure, in collaboration with indigenous peoples, to guarantee the effective participation of representatives of indigenous peoples and, in particular, indigenous governance institutions, in the seventieth session of the Assembly, including a corresponding accreditation mechanism."⁹ Such United Nations resolutions and reports provide a clear and compelling need for indigenous peoples' representatives and institutions (indigenous governing institutions) to participate directly in the work of the United Nations through the creation of new and distinct measures.

Indigenous individuals and communities have so far participated in the work of the United Nations in a number of ways: first, as indigenous peoples' organizations in the work of the Expert Mechanism and Permanent Forum; second, as a matter of necessity, as non-governmental organizations in consultative status with the Economic and Social Council in the work of the Human Rights Council; finally, as non-governmental or civil society actors through ad hoc mechanisms in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, in meetings of the Conference of the Parties to the Convention on Biological Diversity, in the UN Environment Programme following adoption of the Indigenous Peoples Policy Guidance in 2012, and the International Fund for Agriculture Development following adoption of its Policy on Engagement with Indigenous Peoples in 2009. Indigenous individuals, as part of voluntarily-constituted civil society organizations, thus have several well-established mechanisms for being accredited to participate in the work of the United Nations. Such procedures should be maintained at the present time. Improvement may be needed in these procedures, but it was not called for by the World Conference Outcome Document and is thus beyond the scope of this consultative process.

Yet, none of these existing participation processes or mechanisms recognizes the distinct political, social, and legal nature of indigenous peoples' governing institutions. Indigenous governing institutions are unable to participate in their own right in important meetings and activities which may affect them. Without a special invitation, indigenous governing institutions, as such, cannot participate in, even to simply attend and observe, sessions of the Human Rights Council or the Third Committee of the General Assembly, which adopt annual resolutions on the

⁷ The Secretary-General, *Report of the Secretary-General on the Ways and Means of Promoting Participation at the United Nations of Indigenous Peoples' Representatives on Issues Affecting Them*, ¶ 1, delivered to the Human Rights Council, U.N. Doc. A/HRC/21/24 (2 July 2012).

⁸ The Secretary-General, *Report of the Secretary-General on the Progress Made in the Implementation of the Outcome Document of the High-Level Plenary Meeting of the General Assembly Known as the World Conference on Indigenous Peoples*, ¶ 48, delivered to the Economic and Social Council, U.N. Doc. A/70/84-E/2015/76 (18 May 2015).

⁹ The Permanent Forum on Indigenous Issues, *Report on the Fourteenth Session (20 April-1 May 2015)*, ¶ 7, delivered to the Economic and Social Council, U.N. Doc. E/2015/43-E/C.19/2015/10.

rights of indigenous peoples. Nor can they participate in any meetings of the Commission on the Status of Women or other functional commissions of the Economic and Social Council.

For indigenous governing institutions, pursuing the accreditation process as a non-governmental entity or as a civil society actor is entirely inappropriate and inadequate. They are duly-constituted governments which represent their members or citizens. For these reasons, this consultative process should focus solely on the procedures to enable the participation of indigenous governing institutions at the United Nations, as called for in the World Conference Outcome Document and mandated by General Assembly resolution 70/232.

The summary of comments of states and others in the 2015 electronic consultation to inform the Secretary-General's report on progress made in the implementation of the outcome document of the World Conference on Indigenous Peoples¹⁰ shows explicitly the understanding that this consultative process is intended to establish a new specific category for indigenous governing institutions to participate in the work of the United Nations. Responses emphasized that this new category or status should be distinct from the NGO process and should be reserved for indigenous governing institutions only. In their responses, states also recognize that current opportunities for participation are inadequate and not reflective of the unique relationship of indigenous peoples' governing institutions with the state where they live. Importantly, the responses make clear that the intent of this consultative process is to "recognize these indigenous peoples' institutions and to establish a new indigenous category or observer status" and that the new process "should in no way prejudice indigenous peoples' non-governmental organizations that can and should continue to work within existing ECOSOC processes."¹¹

II. What rights of participation should indigenous governing institutions have?

Whatever new process, procedure, or mechanism is decided upon to enable the participation of indigenous governing institutions at the United Nations, the new status should ensure that indigenous governing institutions are able to participate in activities of the United Nations at the very minimum in a manner comparable to that exercised by non-governmental organizations in consultative status with the Economic and Social Council. This level of participation would include, among other things, attending meetings, submitting written statements, making oral statements, and proposing agenda items, all subject, of course, to reasonable rules for the conduct of meetings. Further, as representative bodies, indigenous governing institutions should have priority over non-governmental organizations with regard to seating and order of speaking, and should enjoy relaxed limitations and rules on the length of their oral statements and written submissions.

Indigenous governing institutions should be able to participate in an effective and meaningful way in all relevant United Nations meetings and bodies, and not just the indigenous-specific mechanisms such as the Permanent Forum on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples. Such bodies would include those with

¹⁰Participation of indigenous peoples at the United Nations: Overview of responses by indigenous peoples and Member States to a 2015 questionnaire ("the summary of responses"), available at: http://www.un.org/esa/socdev/unpfi/documents/2016/Docs-undates/questionnaire_overview7Briefing.pdf

¹¹ *Id.*

direct implications for indigenous interests such as the Economic and Social Council and its subsidiary bodies -the Commission on the Status of Women, the Commission on Social Development, and the Permanent Forum on Indigenous Issues; the Human Rights Council and its subsidiary bodies -the special procedures and the Expert Mechanism on the Rights of Indigenous Peoples; and the treaty bodies and relevant meetings of the General Assembly and its Main Committees. This preliminary listing is not intended to be exhaustive or to exclude participation in other UN bodies, mechanisms, or specialized agencies.

III. Who will the new status apply to?

The World Conference Outcome Document specifies that the new status shall apply to indigenous peoples' representatives and institutions. For the purposes of our submission, we refer to such groups as indigenous governing institutions, which are the authoritative and duly comprised decision-making bodies of their constituent indigenous peoples. Such bodies may be known by a number of different blanket terms such as, inter alia, customary, traditional, or constitutional governments, indigenous parliaments, assemblies, or councils. The new status, whatever it is called, should apply only to such duly established indigenous governing institutions recognized by their own indigenous constituents as such, and acting in a representative governmental capacity.

It appears very likely, perhaps certain, that it will be necessary to assure that the new status is limited to governing institutions of *indigenous peoples*, as that term is used and understood in the United Nations and other intergovernmental bodies. Although there is no universally agreed definition of who is "indigenous," the term has a generally accepted meaning that has developed over the past 30 years in United Nations bodies and other intergovernmental organizations, including the International Labour Organization, the World Bank, and the Inter-American Development Bank, among others. It will be important to assure that the new status and rules for indigenous governing institutions apply only to *indigenous* peoples and not to ethnic, national, linguistic, racial, or other groups that are not, in fact, indigenous.

IV. The accrediting body

The General Assembly should decide to use an existing committee or working group or to create a new committee or working group to carry out the accreditation process, that is, to decide whether an applicant is qualified to participate as an indigenous governing institution in the work of the United Nations. The UN Charter recognizes the authority of the General Assembly to create such a committee or working group, providing that the "General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions."¹² And the United Nations Rules of Procedure further reference the "desirability of the Main Committees' making use of subcommittees or working groups."¹³

¹²U.N. Charter art. 22.

¹³See Rules of Procedure of the General Assembly (embodying amendments and additions adopted by the General Assembly up to September 2007), Annex IV, *Conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly*, ¶ 66, *establishment of subcommittees or working groups* N520/Rev.17 (United Nations New York 2008).

The committee or working group must include some indigenous government leaders or, at minimum, must consult with indigenous government leaders, experts, or advisers. The committee should be authorized to recommend to the General Assembly the accreditation of indigenous governing institutions that meet the requirements. Creation of a separate accreditation process and accrediting body by resolution of the General Assembly has occurred, for example, with respect to National Human Rights Institutions.

In order to ensure adequate participation by indigenous governing institutions, the United Nations system, as appropriate, should provide the necessary financial and technical support for indigenous peoples' governing institutions seeking to participate in the work of the United Nations.

V. The accreditation process and criteria

To do the important work of processing applications and recommending the accreditation of indigenous governing institutions, there must be a new process with new rules and standards. Accreditation is the formal decision recognizing an indigenous government as qualified to participate in the United Nations. Accreditation standards must be strong but flexible and responsive to the differences among indigenous governing institutions in various regions of the world.

The process of accreditation for indigenous governing institutions must assure that applicants are in fact indigenous and are genuine, duly chosen representatives of the people and governing institution they purport to represent. While the accreditation body or committee could be responsible for elaborating standards and procedures for accreditation, a preliminary set of criteria for consideration of applications follows.

Self-identification alone should not be sufficient for accreditation though it must be taken into consideration. Rather, an applicant should provide documentary or other evidence of its identity as indigenous and of its character as an authentic indigenous governing body of the indigenous people concerned. No particular form or structure of government should be required, and all genuine, indigenous governing institutions should have an opportunity to apply and to demonstrate their qualifications for accreditation.

Applicants should be requested to provide, initially, among other things, documentation or other reliable evidence establishing their existence as a government or governing institution, authorizing the application to be made, and designating one or more representatives. Documentation could include written or oral testimony or statements. Each applicant should also, for example, briefly describe the people, indigenous nation, or community that it represents, the governing powers or authority that it exercises, and the principal officials or office holders in the government. The committee should consider evidence and views from all relevant sources.

State recognition should be a consideration for accreditation, but cannot be a necessary criterion. The status of indigenous governments does not and must not depend on recognition by the states where they are located. Recognition by other indigenous peoples, however, can serve as some evidence that an indigenous governing institution is genuine and entitled to participate in

the United Nations.

We are prepared to recommend and discuss further, more detailed rules and procedures for accreditation. We look forward to an appropriate time to submit further and more detailed recommendations. We also look forward to reviewing the proposals and comments of others and to the opportunity to respond to those proposals and comments.

VI. Benefits to the United Nations

The United Nations has now recognized the need to address barriers to the participation of indigenous governing institutions in the work of the UN system. Indigenous governing institutions have valuable contributions to make to the world community, and in 2016, their regular and permanent participation at the United Nations should be ensured by providing full recognition of their governmental status and by permitting them to participate in United Nations meetings and activities.

Indigenous governing institutions, duly-constituted and representing their constituents, members, and peoples, are the best and most appropriate actors to speak to matters that affect them in the United Nations, such as violence against indigenous women and protecting indigenous cultures, lands, and resources. The 2012 Secretary-General's report recognizes the functional advantages input from indigenous governing institutions provides to the United Nations system. The summary of responses to the 2015 Secretary-General's report further notes that indigenous peoples bring important perspectives to the work of the United Nations not only on indigenous issues, but to a whole range of themes considered by the United Nations.¹⁴

Enabling indigenous governing institutions greater and permanent participation in the United Nations will mean representative indigenous voices will always be heard. Enabling indigenous governing institutions to speak for themselves is not only the right thing to do in principle to meet the call of the World Conference Outcome Document, but it will also yield significant benefits to the United Nations system and result in more informed deliberations, better decisions, more successful programs, greater security for indigenous rights, and progress toward achieving the purposes of the Declaration.

¹⁴ Participation of indigenous peoples at the United Nations: Overview of responses by indigenous peoples and Member States to a 2015 questionnaire ("the summary of responses"), available at: http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/questionnaire_overview7Briefing.pdf

Australian Submission to the electronic consultation phase regarding the participation of indigenous peoples' and organisations in relevant UN meetings on issues that affect them

7 April 2016

Australia supports increased participation of indigenous peoples in meetings of United Nations bodies on issues that have a significant and specific impact on their lives, culture and wellbeing.

We look forward to learning from the current consultations and highly appreciate the efforts being undertaken by the four advisors, Ambassador Kai Sauer, Ambassador Martha Ama Akyaa Pobe, Dr. Claire Charters and Prof. James Anaya.

To achieve increased participation of indigenous peoples at the United Nations, there are a number of specific issues to be addressed:

- How participation would occur;
- The means and level of representation; and
- Eligibility and accreditation, and how this is determined.

Participation

The participation of indigenous peoples' representatives in United Nations bodies must be valued both by Member States and by indigenous peoples both in word and action. For it to be valued, the participation must be meaningful, with the input and views of all participants in United Nations bodies being respected and able to impact on the decision making process. The opinions and proposals put forward by indigenous representatives must be taken into account in assessments and negotiations for determining action.

This could occur through a number of methods: co-facilitation as occurred at the World Conference on Indigenous Peoples; consultation with the group of representatives; or independent participation in relevant UN mechanisms and processes.

Consultation with the representatives as a group on issues particularly impacting on indigenous peoples may be a method that addresses the difficulties faced by indigenous peoples' organisations in meeting the criteria for consultative status. The consultation would not be with the individual groups from whom the representatives have allegiance, but rather the representatives as a group.

Representation

A method of representation that will allow the opinions, needs and situation of all indigenous groups to be heard needs to be determined, and Australia is open to learning more about the possibilities.

In addressing this issues, we believe it is essential that the representatives have independence from the State; they must have the authority to provide oral and verbal input to relevant UN processes,; and that they reflect an appropriate gender, geographic and cultural mix.

Indigenous people represent a wide variety of peoples and organisations across the globe. Some of these are formally recognised by their governments and others are not. Representation must allow for indigenous people to self-select their representatives, regardless of legal stature.

Further discussions will need to occur regarding the number of indigenous representatives engaged. It is not feasible or practical for every indigenous group/nation to have a separate representative given the number of indigenous peoples groups and nations globally. If it is decided that representation will be on a regional level, the representative must be able to speak for all groups within that region. One

option is a consultative group encompassing different indigenous groups within the region supporting each of the regional representatives.

The resource implications of representation should also be considered carefully. The establishment of new mechanisms would likely cause significant delays to achieving indigenous participation. Australia would therefore favour the utilisation of existing mechanisms.

The views of indigenous peoples must be heard in respect of this issue, and the current consultation process will be extremely valuable. How representatives are chosen should reflect the different representative approaches of different groups – that is, representatives could be chosen by election, by authority, or by consensus. If representation is on a regional level, the most appropriate approach should be determined within that region.

Eligibility

Any representative must have the authority of the group that they are representing, whether it be an indigenous group/nation or a region.

The criteria for determining eligibility of indigenous peoples' representatives must reflect the rules and obligations for membership of an indigenous group/nation as determined by that group/nation. For example, the representative must be accepted as a member of an indigenous group/nation with whom they identify by that group/nation. It should not be determined by Member States.

National indigenous representative or governing bodies should be consulted as to the eligibility of an individual who is seeking to serve as a representative.

Eligibility to represent a region, particularly diverse regions, needs to be determined by groups within that region.

Australia continues to support increasing participation by indigenous peoples' representatives in United Nations bodies and believes that the input gained by the advisers during this consultation process will be of great value.

Candidate for the UN Human Rights Council

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07 April 2016

Participation of Indigenous Peoples at the United Nations

In the outcome document of the 2014 high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples,¹ the Members States of the United Nations committed to consider, at the seventieth session of the General Assembly, ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any specific proposals made by the Secretary-General.

We, Vagahau Niue Trust (VNT) and the Pacific Womens' Indigenous Networks (PacificWIN) would offer the following contributions for your consideration:

[1] Preliminaries

- Fakaalofa lahi atu, fakaaue ha kua feleveia ke he tau laupepa nei. Fakaaue ha kua maeke ke fakakite falu manatu mahuiga ki a mautolu mo e ha mautolu a fakalataha atu ke he tau tone tokoluga. Matutaki atu ha ko e tau momoko mo e ha mautolu a lea Vagahau Niue ha kua teitei gala noa. Kumi atu lagomatai ke he matafekau mahuiga ia ma e ha mautolu a tau fanau anoiha. Fakaaue ke he matagahua he kau gahua ki ai, tau takitaki he nofoa, mo e falu foki - ha kua fakamalolo ke he tau matagahua he tau tagata he ha lalu tau motu mo e tau mahani motu. Kia Tu Tagaloa e mafola, Pefi Kingi pbbcc Vagahau Niue Trust & PacificWIN (Pacific Ocean)

¹(A/RES/69/12)

- Great greetings, thank you for this opportunity to communicate through these means. Thank you that we are able to share a few thoughts pertinent to our connection to this High Level platform. Our main commitment is to our Mother Language which has become endangered. We look to this Platform to assist us towards saving our language for our children and their future. Gratitude to the General Assembly, the President, the UNFP II, the Secretariat and all others for profiling all of our relevant indigenous issues. Blessings from on high, Pefi Kingi pbbcc Vagahau Niue Trust and PacificWIN (Pacific Ocean)

[2] Preamble

We, VNT and PacificWIN endorse and thank the General Assembly for its resolution,² entitled "Rights of Indigenous Peoples", requested by the President of the General Assembly, at its seventieth session, to conduct, within existing resources, timely, inclusive, representative and transparent consultations with Member States, indigenous peoples' representatives and institutions from all regions of the world, and existing relevant mechanisms of the United Nations, on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.

We are grateful for this commitment because it allows us, VNT and PacificWIN, to have voice and contribute to this particular invitation. The significance of this invitation is that we, as Niue civil society organisations resident in New Zealand, would otherwise not have access to UN processes (this is elaborated in the next section), and access is a pertinent issue for our Pacific sovereign nation.

[3] History of Niue and the UN

As Niue residents in metropolitan countries of choice, we bear the complexities of our country's political birth and development which includes being a former dependency of both the Cook Islands and New Zealand.

In 1974, after a constitutional referendum, Niue became a state in free association with New Zealand.³

In 1992, the UN recognised Niue's right to establish diplomatic relations with other countries. Since then, both Niue (and the Cook Islands) have been allowed to attend UN-sponsored conferences open to "all States" as well as sign and ratify UN treaties open to "non-member states".

In 1993, Niue and the Cook Islands were granted membership of UNESCO.

² [A/RES/70/232](#)

³ Chapman et al, 1982, Niue, A History of the Island.

In 1994, the UN Secretariat "recognized the full treaty-making capacity ... of Niue".⁴

In 2007, New Zealand formally consented for Niue to independently conduct its own foreign affairs.

As of 2016, the Cook Islands, Niue, and Kosovo are the only states that participate in UN specialised agencies, but which are not member or observer states of the UN itself.⁵

[4] Access to Participation

As Niue residents in New Zealand, Australia, USA and other metropolitan countries, here is the current clarification of our status:

- [a] We may have dual citizenship of Niue and New Zealand; however, Niue in itself is a non-Member and non-observer state of the UN;
- [b] The Niue population of New Zealand is the greatest of all Niue populations in the world (n=22,473; 2006 Census); however, we are also now treated as if we are not "real Niue" in our own homelands (most of which we ignore because it is premised on other extenuating realities). We are confident about our significant contributions to our homelands which helps us to "stand tall" in our homelands.
- [c] We may have dual citizenship of Niue and New Zealand; however, we would always support the indigenous Maori peoples of New Zealand as having priority as the first peoples in New Zealand;
- [d] Our non-status has been problematic for us, we have had to be creative and seek other ways to participate with UN processes. We have umbrella-ed under other accredited bodies (eg, thanks to the Council of International Development, New Zealand). We have also managed to get through the barriers via the UNFP II who allowed us participation at its UNFP II meeting irrespective of our non-UN status.
- [e] We refer to Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirms that as indigenous peoples, we have the right to participate in decision-making in matters which would affect our rights, through representatives chosen by us in accordance with our own procedures, as well as to maintain and develop our own indigenous decision-making institutions.

⁴ Repertory of Practice of United Nations Organs Supplement No. 8, UN.p10 (Refer <http://legal.un.org/repertory/art27.htm>)

⁵ https://en.wikipedia.org/wiki/Political_status_of_the_Cook_Islands_and_Niue Retrieved 01 April 2016.

[f] We also refer to Article 41 of the Declaration, which establishes a duty for the United Nations to contribute to the full realization of the provisions of the Declaration, including through ways and means of ensuring participation of indigenous peoples on issues affecting us.

[g] May we plead with the President of the General Assembly to consider that we - Niue Peoples resident in New Zealand, Australia and USA are a migrant/diaspora communities that still hold firmly to our indigenous status, as originating from our respective Mother Lands. We require special dispensation in order to participate in UN matters affecting us. As demonstrated , even before we discuss accreditation, procedures and other modalities, we have a barrier that defines us as being of "non-status". This is akin to "being invisible" and having "no significance" in the bigger scheme. We know we matter,so we put it to you that a solution to this problem would be most welcomed and we are available to further socialize this if required. We do want to be included and counted in the processes and decisions that have bearing on our Niue families , communities, villages and civil society organisations.

(5) Meaningful Participation of indigenous Niue Peoples

Niue participation may not have been visible nor prevalent but we have watched and observed from the sidelines and we put forward these few points for the consideration of the GA President and Advisers. For our developed and continued participation in UN processes and to contribute to dialogue concerning decisions that impact us, we perceive the following community-based points to be of import.

[a)	Early Notification Where notification is to be given, it needs to be done early enough to allow the indigenous peoples to have the opportunity to influence the planning of a project and its environmental assessment process before any irrevocable decisions are made.
●	Technology May we please denote for the Panel that most indigenous peoples do not necessarily have access to internet, so if you await a barrage of responses, it will not be forthcoming. Possible Solution: Can there be communication links set up for Reps to communicate with Pacific, please?
●	Communications Can it also be noted that this is why Representatives are mistakenly thought to be not representing us, because they do not communicate with us all, nor are they resourced to do so. Possible Solution 1: Can the Reps be granted resources to maintain contact with key stakeholders so key stakeholders can ensure inclusion of their voices? Possible Solution 2: Can the Reps please communicate with their jurisdictions? In all the times that we have communicated with our Pacific reps, they have never responded to our sincere questions. We did

	<p>well with the Aboriginal Australian rep last decade, he was marvelous because he thought us important enough to keep in communication. We do not hear from our Maori reps, and rightfully so, as they have their own peoples to talk with. They have overlooked us and gone directly to the Pacific countries, which was great, yet we are at their doorstep.</p>
<ul style="list-style-type: none"> ● 	<p>One Representative We have experienced that most of Pacific constituencies do get overlooked when we only have the one representative, which is usually a person of Maori background. We support this, but often our issues are overlooked because of this. Also, the Maori and Aboriginal Reps do not know the Pacific regional community as well as their own (only to be expected), but consequently, we are left out of pertinent conversations.</p> <p>Possible Solution: Is there any way possible for the GA to consider that there should be a Pacific rep (that is, non-Maori and non-Aboriginal), and/or resource the Pacific Ocean Rep to ensure s/he reaches the Pacific constituencies who are omitted from UN conversations as a result of the prevailing realities at regional level.</p>

[b]	<p>Accessible information We acknowledge the good work of the UNFPII in ensuring that all participants are provided with the information via internet so we can participate effectively on a timely basis. We should only need to battle the most necessary processes and that is access of information that is limited only in accordance with information and privacy legislation.</p>
<ul style="list-style-type: none"> ● 	<p>Technology Again the same issue as above, not all of the Pacific or the rural areas are covered and "wired up".</p> <p>Possible Solution: A communication network for different jurisdictions could be put in place to avoid this recurring, and it has recurred for the last several decades (1980s) since we have been trying to be involved.</p>
<ul style="list-style-type: none"> ● 	<p>Languages Most of the time, Pacific peoples do not engage because we are an oral-based cultures. This means we respond best to face-to-face dialogue and being approached and invited to participate. In addition, most of the time Pacific peoples do not engage because the mode of English is hard to understand and even harder to respond to.</p> <p>Possible Solution: Could resources be made available to assist with translations into the major Pacific languages in the Pacific Region?</p>

[c]	Shared knowledge A project should be developed on the basis of both technical and scientific knowledge and community and Aboriginal traditional knowledge. Knowledge, concerns, values and viewpoints should be shared in an open, respectful and timely manner. This includes information on the potential consequences of a project.
●	Ownership We endorse that any rights stemming from the ownership of information needs to be respected and heard.
●	Indigenous Participation We endorse that the inclusion of INDIGENOUS GROUPS (especially voices that have not been present at "the table" - the UNFP II or GA table) in these processes are pertinent to our survival and we endorse their inclusion. Possible Solution: At all meetings, can spaces be created for OTHER INDIGENOUS PACIFIC VOICES to help them to increase their capacity and capability?
●	Youth Participation We endorse that the inclusion of PACIFIC YOUTH in these processes are pertinent to our survival and we endorse their inclusion. Possible Solution: At all meetings, can spaces be created for Youth to help them to increase their capacity and capability?

[di]	Sensitivity to community values We all appreciate that public participation processes need to be carried out in a manner that respects different indigenous community values and needs.
●	Critique 1 We accept the right and responsibility to critique, not criticise. We reiterate the importance of trying to collaborate and working together, but by the same token the GA and the Advisers need to know about some of the past practices which were not best practice and which did not encourage our respective participation. Possible Solution: It is about trying to "leave no one behind" as we emphasised in our global campaign for the SDGs, can this please be increased so as to "leave no one behind"?
●	Critique 2 We believe one of the foundational principles in the Pacific is consensus and "talanoa" - the process of being conferred with and having an in-depth conversation. A few Pacific regional CSOs ⁶ are perturbed at the produced and published paper entitled 'Study on the relationship between indigenous peoples and the Pacific Ocean' ⁷ . This was completed without due consultation with Pacific stakeholders (meaning non-Maori and non-Aboriginal); and this was a huge concern given that very few such grand opportunities come up for Pacific issues to be tabled at the UNFP II. It is also timely to have such issues discussed at the GA; and we have a great belief and understanding about collective undertakings. It was also a concern because it is now a norm that such major undertakings would be consulted on (if we are mistaken about this process, apologies). Possible Solution: Is there still sufficient time for the paper to be peer reviewed and/or endorsed by key Pacific stakeholders, especially the affected Pacific nations noted in the paper, Kiribati, Papua New Guinea and Tuvalu, please?

⁶ Excluding Maori; and to be fair, we only conferred with one Kiribati, one Tuvalu, one PNG and one Pacific regional CSO so we are aware that we may be in error about how we read the paper, but there were no Pacific groups acknowledged [?]

⁷ E/C.19/2016/3

-	<p>Commend We commend Prof Mick Dodson as our previous Pacific rep. He was the only one who went out of his way to ensure our involvement and engagement. May we note that the Pacific Reps to date need to know that their coverage is the whole of the Pacific, and/or are we mistaken about that that notion and they really are just individuals?</p>
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(e)	<p>Adaptive processes Indigenous participation processes should be designed, implemented and revised as necessary to match the needs and circumstances of the project at hand; and to reflect the needs and expressed preferences of participants. This process may be iterative and dynamic in keeping with the reasonable expectations of participants.</p>
-	<p>Critique We noted with interest that the UNFPII has empowered many Indigenous Peoples, for that the Secretariat can be proud they have done an excellent job of trying to be equal in how representation has been distributed. We are all very pleased that good indigenous peoples have forged ahead and voiced concerns for all of us. However, what has been neglected and where many of our reps have been negligent is that the information does not flow back to the stakeholders the Reps purported to represent and support. The opportunities have been good platforms for individual aspirations and it was not meant nor intended to be that specifically. That notion of individual meritocracy is also au contraire to many indigenous worldviews. With the Forum, Secretariat and all of "us stakeholders" we will have to make more of an effort to ensure that the UNFPII is not just a nice trip for some who go to a meeting to have a nice lunch. Possible Solution: Is it possible for Reps to be more active at local level, and/or is this not an obligation?</p>
-	<p>Commend We commend Susan Alzner, UNNGLS, who really performs stupendously to keep us in the CSO community actively contributing, participating and really owning our processes and gain "great wellbeing" that we "did good". Possible Solution: Are there lessons to be learnt about how that unit operates that could be transferred to UNFPII?</p>

[f]	<p>Transparent results Public participation is based on the premise that the public's contribution will be considered in the decision-making process. A public participation process should, at its conclusion, provide information and a rationale on whether or how the public input affected the decision.</p>
●	<p>Commend We are grateful to the Secretariat for being so prompt as to always provide feedback. Further to that we also need, at the conclusion, to know the rationale for whether and how our public input affected a decision[s].</p> <p>Possible Solution: Is it possible for this to be clearly outlined in simple English, as the UN text and mode of communication is not always accessible?</p>

[8] In Conclusion

Fakaauē lahi atu ha kua fakaata mai ke fai manatu ke lafi ki luga he matagahua mahuiga ne kua fakatutala. Kua fiafia ke leo atu ke he tau manatu fakaoti ka tuku atu ke he laulau lahi he GA, he hukui ko e Takitaki Lahi mo e matakau gahua.

Great thanks for allowing us to add a few humble thoughts to the process of dialogue about significant issues of participation. We anticipate the final results of our collective thinking that will be progressed to the GA, through the President and the Advisers.

Oue Tulou



Pefi Kingi QSM

ppbcc Vagahau Niue Trust & PacificWIN



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29 March 2016

Enabling Participation of Indigenous Constitutional and Customary Government in the UNO

Written contribution to inform the electronic consultation as invited in
A/RES/70.232

The Center for World Indigenous Studies (CWIS) is an indigenous peoples' governed institution founded by the Conference of Tribal Governments in 1979 in Tumwater, Washington USA committed to advancing traditional knowledge through research, education and public policy development. CWIS serves indigenous governments and organizations worldwide and provides guidance to states' governments and multi-lateral organizations as well as the academic and professional communities when asked to do so. CWIS has played an active role in the development of language and studies in support of indigenous peoples concerned with climate change, intellectual property rights, bio-diversity, education, economic and social change, strategic and geopolitical relations as well as establishment of constructive relations between indigenous nations and nations and states. Our organization has actively participated in UN forums the UN Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, EMRIP, UN Declaration on the Rights of Indigenous Peoples, Convention on Biodiversity, Intellectual Property Organization, and the World Conference on Indigenous Peoples including the Outcome Document throughout the years.

We will discuss relevant matters under each of the four questions raised by the General Assembly President and the four advisers (Mr. Kai Sauer, Permanent Representative of Finland, Mrs. Martha Akyaa Pobee, Permanent Representative of Ghana, Dr. Claires Charters from the Pacific region and Dr. James Anaya from the North American region). We offer an initial summary of our observations and then a more detailed discussion below the summary.

Essentially our goal and we believe the goal the President of the General Assembly should adopt is for indigenous peoples' constitutional or customary governments and institutions to directly participate in dialogue and decisions affecting their rights, interests and social, economic, political and strategic status among the world's peoples within the United Nations Organization. The Center for World Indigenous Studies supports formation of an organizational framework that permits such direct participation, but we also suggest that,

1. The political identity of a people (nation) sending a delegation must be part of the eligibility meaning they are a nation, community or society governed under constitutional or customary laws and that the people may be categorized as: Integrated or Absorbed, Autonomous, Associated, Independently Federated, Confederated, Independent Nation [not now an observer or member of the UN] (Black's Law define a nation as: aggregations of men and women, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same languages, using the same customs, possessing historic continuity, and distinguished from other aggregation of men and women, and generally but not necessarily living under the same government and sovereignty. Such a definition is quite different from the classic definition of a state).
2. State recognition must not be a condition for eligibility since such a condition will result in disallowing participation by 72% of the world's 1.3 billion indigenous peoples in a new UN framework. (While the UN asserts that there are 370 million indigenous people reflecting state definitions this is controversial, requiring State recognition a precondition will result in many states withdrawing their recognition to avoid indigenous peoples from participating in a UN Framework.
3. The structure of a UN framework must include four delegation organizations with one organization at the UN Headquarters (Geneva and other UN venues) accessible by the three other organizations, and delegation organizations and participation at the regional, sub-regional and local geographic levels. Such a "two tiered" framework will permit one small delegation body at the Headquarters level to which policies, interventions and issue declarations may be submitted from a "three tiered" regional, sub-regional and local level framework." Such a "1 plus 3 framework" will permit large indigenous nations and small indigenous nations access to the UN system at all four levels. Indigenous nation accessibility is possible through direct delegation presence at the UN Headquarters and other venues while ensuring a UN sanctioned and responding geographical framework at regional, sub-regional and local levels allowing multi-level access allowing for meaningful and effective participation. At present an estimated 6% of indigenous political entities have access to the UN headquarters (can afford to travel, are prepared to engage the UN system directly, have the capabilities to prepare interventions, or speak/write in UN languages).

4. Indigenous nation delegations may speak or intervene at any level concerning any topic deemed relevant to the interests or rights of each nation consistent with the right of free, prior and informed consent.
5. Any delegation may originate an instrument of law or practice at any level of the "1 plus 3" framework that must be considered at all superior levels and submitted to the Third Committee or the Economic and Social Council or other relevant UN agency or body for deliberation.

The President of the General Assembly has suggested that our proposals could address, inter alia, the following elements:

(a) Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective:

Please note our submission under (b) and

(b) Criteria for determining the eligibility of indigenous peoples' representatives for accreditation as such:

We suggest that Indigenous peoples' representatives may be determined eligible if representing a nation (as defined herein) to be accredited as an "Observer Indigenous Nation" to engage in activities appropriate to the United Nations Organization. The criteria follows:

CWIS Principle: A political entity functioning under constitutional or customary law exercising inherent governing powers and thereby representing a distinct population must be considered *eligible* to send delegates to the United Nations Organization.

Each may be considered for purposes of eligibility a "nation" consistent with this definition: A people, or aggregation of men and women, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same languages, using the same customs, possessing historic continuity, and distinguished from other aggregation of men and women, and generally but not necessarily living under the same government and sovereignty (adapted from Black's Law Dictionary (Garner 2014)). Each Indigenous Nations may be considered eligible without regard to economic, social, or cultural capacities or size of population or size of territory.

The political identity of each indigenous governing authority may fall into one of the following categories discussed in *Indigenous Nations and Modern States* (Ryser 2012), but defined below):

1. Integrated or absorbed Nation, Community or Society (As determined by the nation itself and historical and political circumstances)

2. Autonomous Nation (As determined by the nation itself by way of a public declaration or intergovernmental agreement with another nation or a state.)
3. Associated Nation (As determined by the nation itself according to a treaty or other constructive arrangement with nation or state)
4. Independently Federated Nation (As determined by the nation itself and its subordinate entities)
5. Confederation (As determined by the nations allied as such)
6. Independent Nation (As determined by a plebiscite, intergovernmental agreement, or international declaration--applying the definition for nation herein)

All having been thus categorized shall have political equality within the context of the United Nations organizational framework.

CWIS PRINCIPLE: Each must be recognized as an organized jural society, inhabiting a distinct portion of the earth (whether in a fixed territory, transit territory, overlapping territory due to population transit, or seasonal territory whether recognized or not recognized by other nations or states) without regard to economic or political capacity or territorial or population size. On this basis each must be enjoy political equality with all other political parties.

(c) Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation;

Nation, Community or Society

Indigenous peoples constitute individual nations, communities or societies

A people, or aggregation of men and women, existing in the form of an organized jural society, inhabiting a distinct portion of the earth, speaking the same languages, using the same customs, possessing historic continuity, and distinguished from other aggregation of men and women, and generally but not necessarily living under the same government and sovereignty (adapted from Black's Law Dictionary (Garner 2014)).

An Indigenous nation may be defined as a non-state political community constituted as a people, an aggregation of men and women existing in the form of an organized jural society (constitutional or) inhabiting a distinct portion of the earth (fixed territory, nomadic, shifting with seasons or other climatic circumstances, etc), speaking the same language or languages, using the same customs, possessing historic continuity and distinguished from other aggregations of men and women, and generally but not necessarily living under the same constitutional or customary government with inherent powers.

Language:

According to our estimates the vast majority of the world 's 7,097 languages (according to the Linguistic Society of America and the 19th Edition of Ethnologue) 5,000 are languages spoken by indigenous peoples as a first language. Shared language is a key

determinant of the existence of a nation of people. Therefore, it is realistic to suggest that there are at least 5,000 indigenous nations in the world in Africa, (30%), Americas (15%), Asia (32%), Europe (4%) and the Pacific (19%). Accordingly

Customs:

Customary laws guide many peoples throughout the world providing exacting practices and the ability to sanction. Rautenbach classically observes, "Customary law generally deals with private relationships and therefore operates in the private sphere only. It pertains to limited areas of law, such as family law, law of property, law of delict, traditional leadership and courts ..." (Rautenbach 2008) and may be reasonably relied on to satisfy representations by indigenous governments acting under constitutional and customary law.

Territory:

Indigenous nations occupy fixed territories, traverse lands forming a linear territory as in nomadic territories, seasonal territories where a nation moves from one territory to another to benefit from seasonal changes for food, protection, and climatic conditions. That Indigenous nations engage in a variety of land uses forming different territories must be taken into consideration and their use of lands on the earth must not be cause for discrimination preventing their accreditation having fully recognized representatives in deliberations about their rights and interest in a manner consistent with their free, prior and informed consent.

The political identity of each indigenous people may fall into one or the following establishing eligibility for an Organization of Indigenous Observer Nations (OION) that includes an Observer Indigenous Nations' Council (OINC) including 18 members that functions at the UN Headquarters and a Observer Indigenous Nations Assembly (OINA) operating at the regions, sub-regional and local levels:

1. "Jplus 3" representative Organization of Indigenous Observer Nations (OION) established locally, sub-regionally, regionally and UN headquarter body defined structure would be organized from the ground up.
 - a. Local: A body that is constituted by nations, communities and societies themselves, constituted by neighboring nations, communities and societies with technical support offered by the United Nations including self-defined representatives or participation per constitutional or customary laws from locally defined region. Eligibility and number of representatives to the local body may be determined by rules and protocols established by indigenous nations participating at the local level provided that each representative or delegation of representatives has been designated by the constitutional or customary governing body of an indigenous nation as defined herein.
 - b. Sub-regional: A body containing participants from the locally defined constituent structures according to participant specifications -- this body may receive direct reports, requests from the United Nations and receives

reports, request and directions from the local constituent bodies. *Eligibility and number of representatives to the Subregional body may be determined by rules and protocols established by indigenous nations participating at the local level provided that each representative or delegation of representatives has been designated by the constitutional or customary governing body of an indigenous nation as defined herein.*

- c. Regional: This body may include participants from sub-regional and local political entities (that may have territories located across states' boundaries) serving as a forum receiving requests, recommendations and reports from the Local Bodies and Sub-Regional Bodies. Parties negotiate and ratify reports, statements and interventions prepared for submission to a UN body. *Eligibility and number of representatives to the local body may be determined by rules and protocols established by indigenous nations participating at the Regional level provided that each representative or delegation of representatives has been designated by the constitutional or customary governing body of an indigenous nation as defined herein.*
- d. UN Organization of Observer Indigenous Nations (OOIN): This overall body is organized by geographic area and designated by the Regional Bodies in consultation with each other where representation is drawn from defined geographic regions in each continent irrespective of state boundaries (accommodating indigenous nations, communities or societies that have been geographically bifurcated or whose traditional territories have been divided by states' boundaries. In North America (Canada, Mexico, USA) for example there may be as many as 23 distinct geographic regions that may include as many delegations with membership for each geographic region determined proportionately--three representative for each region. Each cluster of regions would repeat this process. By the process a total of 1002 representatives will be recognized as eligible to serve as regional delegations proportionately representing each region. Therefore North America would designate 69 eligible delegates, South America would designate 72 delegates, Central America would designate 30 delegates and so on as indicated in the table below.
- e. The 1plus 3 Organization of Observer Indigenous Nations (OOIN) provides for the 18member Observer Indigenous Nations Council that allows for direct communications at the United Nations Headquarters level (1) and the Observer Indigenous Nations Assembly provides direct participation at the regional, sub-regional and local levels. These may be designated as the Observer Indigenous Nations Organization containing the Observer Nations Council and the Constituent Assembly
 - i. The 18 member *Observer Indigenous Nations Council (OINC)* should include representatives of regions by continent (delegations of 2 each) with a body of 18that functions at the UN Headquarters level. Itconstitutes a forum at which all 18 members may exercise a vote or act with in *consensus and with the agreement of the*

- assembly of the whole invite interventions from any of the representatives from the Observer Nations Council.*
- ii. *Observer Indigenous Nations Assembly (OINA) could have as many as 1002 delegates from 378 (estimated) sub-geographic regions that in the aggregate enjoys the direct participation or engagement by sub-regional and local bodies of the OINA.*
 - iii. *Together these bodies facilitate the direct participation of up to 5000 indigenous nations and 1.3 billion people speaking 7,096 languages.*

Organization of Observer Indigenous Nations (OOIN)

CONTINENT	Regions	**OINAs	*OINC	Distribution
North America	23	69	2	6.0%
South America	24	72	2	6.3%
Central Am/Caribbean	10	30	2	2.6%
Africa	73	219	2	19.00%
Asia	65	195	2	17.00%
South Asia	55	165	2	15.00%
Northern Africa/Eastern Meditera	42	126	2	11.00%
Pacific	72	84	2	19.00%
Europe	14	42	2	4.00%
totals	378	1002	18	100%

* Observer Indigenous Nations Council (OINC)

** Observer Indigenous Nations Assembly (OINA)

Based on Regional organizations and Language distribution

(d) Details of the process, including the information required to be submitted to obtain accreditation as indigenous peoples' representative.

We offer the above formation of the Organization of Observer Indigenous Nations (OONI) as the mechanism for initially determining the eligibility representatives to obtain accreditation to the OONI and thus the UNO provide that the following additional criteria are required for both representatives to the Observer Nations Council and all three levels of the Observer Indigenous Nations Assembly:

1. The delegate is authorized by virtue of constitutional or customary law of the represented nation indicated by either a written instrument in the nation's language or an instrument of a symbolic nature in the form of a pendant, pouch, or other symbol previously and officially identified and submitted to the regional, sub-regional or local assemblage by the governing authority and vouched by another member of the delegation.
2. The delegate provides evidence of personal identity or whose identity a member of the delegation vouches for; and the regional, sub-regional or local assembly formally documents the identity.
3. The regional body submits written or symbolic evidence of delegation identities and authorizations to the Observer Nations Council and this information is duly recorded by the United Nations at the UN Headquarters whereupon when a delegated official attends forums at the United Nations Headquarters or other venues, the identity of that person may be affirmed based on records so assembled.

It is eligibility process (determined in the organizational framework) and accreditation process (determined at the Observer Indigenous Nations Council level and the UN) will establish accreditation for the 18 member Observer Indigenous Nations Council and the 1002 member Observer Indigenous Nations Assembly (at the Regional, sub-regional and local levels) democratically representing the estimated 5000 indigenous nations.

Further CWIS Observations:

The rationale for both the Organization of Indigenous Observer Nations and the 1 plus 3 organizational framework maximizes the potential participations of indigenous nations large, medium and small with various social, economic, political and cultural capacities. We suggest that after the first ten years of the Organization of Indigenous Observer Nations operation that the organization undergo evaluation to improve its functions and capacities to maximize the prospect that indigenous nations that chose to participate in the United Nations Organization will have the greatest possibility to engaged in decisions and dialogue with peoples around the world on matters that affect their rights and

interests in accord with the principle of free, prior and informed consent with the least prospect of discrimination against them.

Here are additional notes that inform our presentation:

A. CWIS OBSERVATIONS:

Several thousand indigenous nations, communities and societies dot the continents with an estimated global aggregate population of 1.3 billion people (Fourth World Mapping Project, 1992). UN member states recognize 370 million people, but the difference of nearly a billion people is due to states' government policies and definitions. The Center for World Indigenous Studies geographic study of nations around the world revealed that the combined populations of Bhil, Mio, Uyghur, Naga, Navajo, Cherokee,

In the United States alone there are at least 550 "unrecognized tribes" and 567 tribes bringing the total number of tribes to more than 1,117 distinct political entities.

In Canada there are 600 First Nations/bands, but 3,100 reserves.

South Sudan boasts 59 indigenous nations with a combined population of 9.9 million.

Indigenous peoples in the Arctic region are estimated at 3,989 million people.

The Peoples' Republic of China has 55 indigenous nations and unrecognized peoples with a combined population of 115 million.

India has the distinction of including Adavisis (including more than 8 million Bhil (in 15 distinct nations) with a combined population of more than 84 million included in 635 specific cultural entities while other distinct indigenous nations including Nagas (Garo, Kachari, Kuki, Mikir, and Naga) that are a bifurcated population between India and Burma of more than 4 million). Other nations such as Tamai with a population of more than 117 million in India and 2.3 million more in Sri Lanka further expand the total of indigenous peoples in India and nearby countries.

As one can readily see the populations of indigenous peoples in India, Sri Lanka, Burma, PR China, and South Sudan alone combine to constitute 316 million people or 86% of the 370 million claimed by the United Nations. The essential question is how many political entities are indigenous political entities and how are they characterized?

Indeed, violent contentions between nations and states tend to be more multi-dimensional. They are more likely to be rooted in territoriality and political status issues with a major secondary component emphasizing economics (Ryser 2012).

The present Declaration constrains the right of self-determination, imposing limitations on the right of Fourth World peoples to freely chose their own political status and

political future without external interference. In other words, the states have agreed that they will seek to limit the political mobility of Fourth World nations. They will prevent them from pursuing their own political future without state control (Ryser 2012).

We propose that candidates for participation as observer peoples qualify in part according to the following political status criteria:

Political status:

In recognition of standard international law and Vattel's Law of Nations (Vattel 1758) there can be many different forms of political status for peoples, but the Law of Nations specifies three primarily: Absorbed, Associated or Independent. We note that in the last two hundred years or so other forms of political status have evolved and are recognized by states' governments and the United Nations as appropriate political forms of human organization internationally. We offer a variation on these forms owing to the existence of evolved political status forms enjoyed by indigenous nations some of which having evolved in political form into recognized states in the United Nations itself. We suggest that such political status forms as we list below have already come into being and should naturally be taken into consideration when accrediting representatives from indigenous nations as Observer Indigenous governments within a framework we outline in this submission.

Integrated Nation

Characteristics:

- *No internal sovereignty and no external sovereignty.*
- *Participation or sharing in political instruments of state or dominant nation.*
- *Exercise delegated powers of government.*
- *Constitutionally defined or impliedly understood to be an integral part of state domain or a dominant nation's domain.*
- *Limited inherent collective rights--individual and group rights defined in state constitution or reduced rights as a result of unstated principles.*
- *Full economic dependency.*

Integration into a state has rarely occurred as a result of a nation expressing formal consent. Often, peoples who have been integrated without their consent are defined as minorities, ethnic groups, or sub-state populations. Though it is inaccurate to define nations as any of these, states' governments express a preference for such terms even though nations (generally) do not.

Autonomous Nation

- *Governing authority delegated to nation from state--and inherent internal sovereignty.*
- *Limited external sovereignty.*
- *Limited collective rights--State constitution may define individual and collective rights.*

- *Partial economic self-sufficiency.*

A nation may be associated by customary practice or formal contractual instrument with another nation (protected status) or under a suzerain relationship with another nation or a state. A "band" or community or extended family may fall under a protected status to an Associated nation or in a relationship to a suzerain state.

Associated Nation

- *Exercise inherent powers of government—full or partial internal sovereignty.*
- *Exercise collective rights*
- *Government to government relations with nations and states—limited external sovereignty.*
- *Constitutional and/or Customary laws regulating civil matters, but may not exercise authority over criminal matters.*
- *Partial economic self-sufficiency.*

A nation may be associated by customary practice or formal contractual instrument with another nation (protected status) or under a suzerain relationship with another nation or a state. A "band" or community or extended family may fall under a protected status to an Associated nation or in a relationship to a suzerain state.

The Lummi Indian Nation is located near the northwest border of the United States and Canada. It is a wholly likely candidate to blaze a new pathway in the political relations between Indian nations and the United States. In 1990, the Lummi Indian Nation became one of the four Indian nations to first negotiate bi-lateral or multi-lateral treaties with the United States government—none have done so since 1871. The agreement they and the Quinault, Hoopa and Jamestown S'Klallam individually negotiated was the first in a series of new agreements to aid these Indian nations to resume the exercise of self-government. After concluding negotiations of a Compact on Self-Governance with the United States government, the Lummi became one of the first Indian nations in North America to formally affirm a relationship with a state with the political characteristics of an associated nation.

Independently Federated Nation

- *Exercise inherent powers of government - varying degree of negotiated internal sovereignty.*
- *Government to government relations with nations and states - varying external degree of sovereignty.*
- *Constitutional or customary laws exercised over civil and criminal matters*
- *Substantial economic self-sufficiency engaging in independent economic relations.*

Nations having this status are virtually independent nations, not independent states. If there were no state system, these nations would be regarded as independent political personalities with strong cultures, which define the political, social and economic

ji-amework for human organization in relation to the land and territory. In the modern political environment, these nations have chosen to live in co-existence with states, and do not seek to compete with the state. The country of Catalonia in Spain is an example of a nation with this status. Other nations either seeking this status or which have achieved it include the Massai (Kenya), Balochis (Pakistan), Standing Rock Sioux (U.S.A.), Kurds (Turkey, Syria, Iraq, Iran), the Basque of Euzkadi (Spain), the Faeroees of the Faeroe Islands (Denmark), Tartars of Tartaristan (Russian Federation) and the many nations of West Papua (U.S. of Indonesia). The nations with this status exercise their inherent powers of government and varying degrees of negotiated internal sovereignty. They also conduct formalized government-to-government relations with other nations and states and consequently carry out varying degrees of external sovereignty.

Independent Nation-State

- Exercise constituted powers of government.
- Full internal sovereignty and full external sovereignty.
- Economic dependency.

Nations seeking or achieving the status of an independent nation-state are growing in number in the international arena. One or more nations forming a state as a result of mutual consent of the governed have all of the qualities of an independent nation and independent state. Examples of nation-states include: Iceland, Vanuatu, Kiribati, Kuwait, Yemen, Eritrea, San Marino, Andorra, Liechtenstein, and Brunei. Nations that seek to achieve or have achieved the status of nation-state include: Federation of Micronesia, Kurdistan (Turkey, Syria, Iraq, Iran), East Timor (Portugal, Indonesia), Kanakia (France), Nagaland (India), Sahrawi (Morocco), Tibet (Peoples Republic of China), Palau (U.S.A.), Somaliland, and Karen (Burma and Thailand).

We further offer these reflections in support of our proposal:

The UN Declaration on the Rights of Indigenous Peoples declares that self-determination for Fourth World nations means:

Article 4: Indigenous peoples, in exercising their right to self determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

B. CWIS OBSERVATION:

Self-determination has no meaning unless it recognizes the right of a people to freely choose their own political status -~~the~~ir own political future. Absent this recognized fundamental right as peoples and human beings, Fourth World nations are left to the political, economic and security whims of arbitrary state power.

C. CWIS OBSERVATION:

- 1 The lessons we must collectively learn from the experience of political events since 1948 include these:
- 2 The state system is not perfect; it is an experiment in human problem solving that does not always lend itself well to solving problems for all of humanity.
- 3 Nations are natural human organisms that persist and must have an acknowledged place as active participants in international intercourse coexisting with states.
- 4 Where states exist and serve the needs of human society they should be nurtured and celebrated, but where states fail to serve the needs of human society, they should be allowed to disassemble in a planned process which permits the nations within to systematically reassume their governing responsibilities.
- 5 If a state is no longer viable politically and economically and does not have distinct nations within it, its structure should be replaced temporarily with international supervision followed by the formation of an internationally recognized variant of human organizational structures deemed appropriate to the extant human cultures and geography of an area, such as a trust territory, freely associated state, commonwealth, or other configuration established for a protected population; such a non-self-governing status must have the potential to be changed to a self-governing status in the future.
- 6 Nations that do not wish to remain within an existing state must have the logical option of changing their political status through peaceful negotiations ; and nations, which choose not to leave a state, should be permitted to exercise self-governing powers appropriate to their scale and to their proximity to the problem requiring governmental decisions.

D. CWIS OBSERVATION:

The International Covenant on the Rights of Indigenous Nations signed by indigenous nations in 1994 declares that self-determination for Fourth World nations means:

Para. 3 Indigenous Nations have the right of self-determination, in accordance with international law, and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development without external interference.

Conclusion:

Our discussion for that calls for establishment of a Organization of Observer Indigenous Nations within the United Nations Organization representing up to 5000 nations and an estimate 1.3 billion indigenous people fully responds to the UN General Assembly Presidents request for comments and suggestions and furthermore responds to the UN Declaration on the Rights of Indigenous Studies principle on free, prior and informed consent as well as self-determination; and in addition our presentation responds to the World Council on Indigenous Peoples Outcome Document commitments of UN Member States.

We stand ready to enter into further exchanges to clarify, amplify or adjust these comments and discussion points when the President request or the advisors request

Endnotes:

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Submitted by on behalf of CWIS

A handwritten signature in black ink, appearing to read 'Rudolph C. Ryser', with a stylized flourish at the end.

Rudolph C. Ryser, Ph.D.
Chair of the Board
Center for World Indigenous Studies
360-450-5645
chair@cwis.org



Maritime Aboriginal Peoples Council

The Maritime Region Aboriginal Leaders
Intergovernmental Council of Aboriginal Peoples
Continuing to Reside on Traditional Ancestral Homelands

Forums

- Leaders Congress
- MAPC Commissions
- MAARS Secretariate
- SARA IKANAWTIKET
- MAPC Administration

MAPC Regional
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Governmental
APPRO Councils

Native Council of
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New Brunswick Aboriginal
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Native Council of
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April 7, 2016

To the President of the General Assembly of the United Nations,
Mr. Mogens Lykketoft
And his Appointed Advisors:

H.E. Mr. Kai Sauer, Perm. Rep. of Finland
H.E. Mrs. Martha Ama Akyaa Pobee, Perm. Rep. of Ghana
Dr. Claire Winfield Ngamihi Charters, Indigenous Peoples
Dr. James Anaya, Indigenous Peoples

Dear Mr. President:

Please accept the enclosed submission by the Maritime Aboriginal Peoples Council for the *Electronic Consultation on Enabling the Effective Participation of Indigenous Peoples' Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them, Through Representatives Chosen in Accordance with Their Own Procedures*, undertaken from March 8 – April 8, 2016.

We give permission to you and your designates that the enclosed submission may be made available broadly to the UN General Assembly, other UN bodies, and the general public, including posting on the relevant UN website for this topic. If you or your advisors, or designates, require any further information or have questions concerning our submission, you may contact me at 1.902.895.2982 or by e-mail at rhunka@mapcorg.ca.

Advancing, Promoting and Advocating the reality of the
Maritime off-reserve Community of Aboriginal Peoples,

Roger Hunka
Director of Intergovernmental Affairs

Enclosure

CC: Chief Grace Conrad, Native Council of Nova Scotia
Chief Lisa Cooper, Native Council of Prince Edward Island
Chief Wendy Wetteland, New Brunswick Aboriginal Peoples Council
National Chief Dwight Dorey, Congress of Aboriginal Peoples

Maritime Aboriginal Peoples Council

April 7, 2016

To the President of the General Assembly of the United Nations, Mr. Mogens Lykketoft
And his Appointed Advisors:

H.E. Mr. Kai Sauer, Permanent Representative of Finland
H.E. Mrs. Martha Arna Akyaa Pobee, Permanent Representative of Ghana
Dr. Claire Winfield Ngamihi Charters, Indigenous Peoples
Dr. James Anaya, Indigenous Peoples

Electronic Consultation on Enabling the Effective Participation of Indigenous Peoples' Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them, Through Representatives Chosen in Accordance with Their Own Procedures

I. Introduction

1. The Maritime Aboriginal Peoples Council is the regional intergovernmental body of the Native Council of Nova Scotia, Native Council of Prince Edward Island, and New Brunswick Aboriginal Peoples Council, the Aboriginal Peoples representative organizations constituted and elected by the "off-reserve Status and Non-Status" Indian/Mi'kmaq/Maliseet/Passamaquoddy /Aboriginal Peoples continuing on traditional ancestral homelands and territories of Mi'kma'ki – today known as the Canadian Provinces of Nova Scotia, Prince Edward Island, and New Brunswick. The Maritime Aboriginal Peoples Council and partner Native Councils advocate for the recognition of the large community of off-reserve Status and Non-Status Indian/Mi'kmaq/Maliseet/Passamaquoddy /Aboriginal Peoples as Indigenous Peoples with the right to self-determination, nested within the Federation of the Peoples of Canada and their Treaty Rights and Aboriginal Rights recognized and affirmed by the *Constitution Act, 1982* Part II Section 35, with the guarantee of Section 25 that "*certain rights and freedoms [in the Canadian Charter of Rights and Freedoms] shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada ...*".
2. The modern manifestation resulting from the history of the political, social, and economic subjugation, displacement, division of communities and families, supplanting of traditional governance structures, and overwhelming of the cultures and languages of the Mi'kmaq People, Maliseet People, and Passamaquoddy People in the Maritimes Region of Canada is worthy to note when considering the question "*who is credible to represent a divided people*", particularly when the question is asked in the frame of creating and filling an Indigenous Peoples seat next to, or affiliated with, a State which has a history, or continues a policy, or seeks a policy which favours one Indigenous Peoples' representative over another or who's policies deny the legitimacy of a particular segment or representatives of an Indigenous People or Indigenous Nation.

Maritime Aboriginal Peoples Council

3. For example, in Canada there remains a subjugating dichotomy of Aboriginal Peoples applied by the Government of Canada to define "Indians" through the application of an Indian Policy and Indian Act.
 - a. "Status Indian" – who has been displaced from traditional ancestral homelands and territories to an Indian Act Reserve, with no recognition of Aboriginal Nationality, save status under the Indian Act.
 - b. "Non-Status Indian" who has not been displaced from traditional ancestral homelands and territories, or either lost, nor was ever granted status under the Indian Act, while through a historical review, an ancestral and community link clearly identifies Non-Status Indians as belonging to one of the remaining 73 Nations of the Aboriginal Peoples of Canada, nested within the Federation of the Peoples of Canada.
4. Both "Status Indians" and "Non-Status Indians" should have the right to self-identification, self-determination, self-government, and a nationality, which would allow the manifestations of a People to continue and develop – they are now denied those fundamental human rights of Peoples and are subjugated under a State law of the Indian Act of Canada.
5. The application of the Indian Act and Indian Policy in Canada by both colonial and modern governments has resulted in:
 - a. the subjugation of Aboriginal Peoples,
 - b. the dispossession of Aboriginal Peoples from their traditional ancestral homelands and territories and resources,
 - c. the denial of Aboriginal Peoples' birthright to be Peoples, forming nations within the Federation of Canada,
 - d. disinheritance of Aboriginal Peoples from their Treaties with the Crown and their Treaty Rights to exercise their Treaties in a honourable nation-to-nation relationship within an honourable confederation; as well as,
 - e. a dichotomy of the Indians, where one community of Indians is held out to be greater than the other, thus further extending the subjugation, dispossession, denial, and disinheritance of Indians "within the Aboriginal Nation itself"; an example being the existence of a large number of "off-reserve Indians" to whom the Government of Canada, after losing successive court challenges, has granted status under the Indian Act and assigned to an Indian Act Band, though in most matters, are excluded from participating in the governance of

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the assigned Indian Act Band or from being represented by the assigned Indian Act Band, and whom with other off-reserve Status and Non-Status Indians have constituted their own organization of self-government.

6. In the late 1970s and early 1980s the disadvantaged Non-Status Indian or "the forgotten peoples" the off-reserve Status and Non-Status Indian/Mi'kmaq/Maliseet/Passamaquoddy Aboriginal Peoples communities constituted their Native Council of Nova Scotia, Native Council of Prince Edward Island, and New Brunswick Aboriginal Peoples Council, and in-tum formed the regional Maritime Aboriginal Peoples Council to advocate for their rights as Peoples, Heirs to Treaty Rights and Beneficiaries of Aboriginal Rights, and to provide services to meet the needs of their Aboriginal communities, abandoned by the State and society to be "the forgotten peoples" or "Non-Status Indians" a State sin by omission and commission.
7. Though constituted by the Aboriginal community, with officials elected by the Aboriginal community, and organized with a broad mandate by the Aboriginal community through traditional governance customs and community law, the Maritime Aboriginal Peoples Council and its partner Native Councils also maintain registration as not-for-profit organizations or societies under provincial or federal law in order to maintain a legal standing as a legally operating entity in Canada and thus enable the Councils to seek funding for services to administer to the needs of the Aboriginal community and to have standing before "*the councils of governments*" of the federal and provincial governments.
8. In the post-1982 patriation era of the *Constitution of Canada*, recognizing and affirming the Aboriginal Rights and Treaty Rights of the Aboriginal Peoples of Canada and in the post-2007 *UN Declaration of the Rights of Indigenous Peoples* era, the Government of Canada denies recognition of the 73 Nations of Aboriginal Peoples. Instead, the Government of Canada prefers to refer to the Indigenous Peoples of Canada as "groups": "Indian groups", "Metis groups", and "Inuit groups", which connotes a homogeneity across the Indigenous Peoples of Canada – where there is none, other than perhaps some similarities experiencing colonization or subjugation, but even then the experience varies greatly.
9. In identifying or restricting the discussion about the Aboriginal Nations of the Aboriginal Peoples of Canada to be relegated to some imposed homogenous concept of an "Indian group", "Metis group", or "Inuit group", the Government of Canada continues to subjugate the Aboriginal Peoples of Canada to a registration process, thus creating a paper manifestation group of "Status Indians" through the Indian Act with status under the Indian Act, or by denying registration under the Indian Act, creates by omission a large group known as "Non-Status Indians".

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10. This subjugating dichotomy of the "Status Indian" and the "Non-Status Indian" is at the core of a fourteen year legal challenge for recognition of the "Non-Status Indian" now before the Supreme Court of Canada; where on October 8, 2015 the legal counsel for the Government of Canada for the first time publicly disclosed to the Supreme Court that the Government of Canada acknowledges that "Non-Status Indians" do in fact come under the Constitutional Head of 91(24) "Indians and Lands Reserved for Indians" and that the Government of Canada has known or ought to have known its jurisdiction for some time.
11. However, the federal Indian Policy, even that of the newly elected federal government, still prefers to limit discussions with and to the three groups of "Indian groups", "Metis groups", and "Inuit groups", and shuns the off-reserve "Non-Status Indian" to be a non-entity.
12. The Maritime Aboriginal Peoples Council takes note of and agrees with the assessment of the Human Rights Council during its twenty-first session under agenda items 2 and 3, that it can be difficult for an Indigenous Peoples' organization to have representatives standing before a body of the United Nations, to which we would add even an Indigenous Peoples' organization representing a disadvantaged segment or "forgotten people", with a broad mandate, and nested within a relatively wealthy nation State with good standing before the United Nations.

II. Recommendations and Views for Consideration

13. We respectfully suggest to the President of the General Assembly and his appointed advisors that foremost, the General Assembly should appreciate that a number of States, including Member States, have several different nations of Indigenous Peoples nested within their borders which are not recognized as Indigenous Peoples or Indigenous Nations, nor have they been recognized by or approached by or received any acknowledgment or benefit from the work of the UN Special Committee on Decolonization or the implementation of the *UN Declaration on Decolonization*.
14. We respectfully suggest that in some situations, such as that in Canada, where the Indigenous Nations of the Indigenous Peoples are nested within modern States heralding from colonial origins, that the work and task of decolonization remains unfinished. Unless those States recognize the plurinational reality of the Indigenous Peoples within their borders and constitute themselves as Plurinational States, such as is the case with the modern manifestation of the Plurinational State of Bolivia with a constitution which recognizes the twenty three plus plurinational Indigenous Nations of Indigenous Peoples continuing on traditional ancestral homelands and territories throughout Bolivia, decolonization in many States, such as Canada, remains incomplete.

Maritime Aboriginal Peoples Council

15. We respectfully suggest that any approach or criteria by the UN General Assembly, as well as UN bodies such as the Economic and Social Council, explicitly recognize the legitimate rights of Indigenous Peoples to have representatives to access or address the General Assembly and other UN bodies on matters which affect them. All Indigenous Peoples, including those not recognized by the State, must be allowed standing and accreditation under UKDRIPs articles 9, 18, 19, and 41. We argue that the voice of the "forgotten peoples" would be key for the meaningful continuation of the UN's work on human rights, Indigenous rights, and decolonization.
16. We respectfully submit to the UN General Assembly that in the instance of the off-reserve Status and Non-Status Indian/Mi'kmaq/Maliseet/Passamaquoddy Aboriginal Peoples of Nova Scotia, New Brunswick, and Prince Edward Island, Canada the Maritime Aboriginal Peoples Council and its partner Native Councils of the Native Council of Nova Scotia, New Brunswick Aboriginal Peoples Council, and Native Council of Prince Edward Island, respectively, are the constituted Indigenous Peoples national representatives by customary community law and also registered by State law, and as such we have the right as members of Indigenous Nations of Indigenous Peoples continuing on traditional ancestral homelands and territories (i.e., not displaced to Indian Act Reserves) to make submissions or directly engage the UN and its bodies in areas which affect our Aboriginal Nations of Aboriginal Peoples – the Mi'kmaq People, the Maliseet People, and the Passamaquoddy People.
17. We respectfully submit that the United Nations bodies should accommodate us to hear our voices as full participants in the UN processes and bodies which have been instituted to promote respect for and safeguard human life, liberty, and the freedom of the person from persecution and want.
18. We respectfully submit that the Supreme Court of Canada has provided Constitutional law that the Government of Canada in Right of the Crown must reconcile its assertion of the sovereignty of the Crown with the pre-existence of the remaining 73 Aboriginal Nations of the Aboriginal Peoples continuing in Canada.
19. We respectfully suggest that reconciliation is the honourable way and the peaceful means to be preferred by a modern Member State of the United Nations to fulfill the *Charter of the United Nations* and the *Universal Declaration of Human Rights*, and the many human rights covenants and protocols of the UN, including the *UN Declaration on the Rights of Indigenous Peoples*.
20. Plurinational states in the Americas are a reality; and although some colonial governments have achieved national independence as Indigenous Nations from their colonial keepers, such as the case of many States in Central America and South America during the 1960s, there nonetheless remains in Canada and in some other American regions unfulfilled promises of reconciliation masked as confederations of Peoples which are not honourable confederations when they exclude or subjugate

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Indigenous Nations of Indigenous Peoples to be "groups" of people, as is the case in Canada containing 73 Aboriginal Nations of the Aboriginal Peoples of Canada nested within the Federation of Canada, but not recognized.

21. We respectfully suggest that the UK General Assembly needs to be careful that it is not too quick to assume that "National Organizations or Groups" have the authority to speak on behalf of an Indigenous People or Indigenous Nation.
22. The UN General Assembly should recognize that organizations established by like-minded or similarly experienced people within a Nation of an Indigenous People have mandates to engage governments and agencies, to voice concerns or comment on matters, issues, laws, regulations, policies, programs, and other matters which could or do undermine the rights or aspirations of the Indigenous Nations of the Indigenous Peoples or violate the *Universal Declaration of Human Rights*, the *UN Declaration on the Rights of Indigenous Peoples*, or other human rights, treaty rights, or Indigenous Peoples rights.
23. We respectfully suggest that the selection process adopted to be used must establish foremost and forefront acceptance of the *UN Declaration on the Rights of Indigenous Peoples*, as a minimum standard of human rights and acknowledge that the ways and means of ensuring the full and effective participation of Indigenous Peoples on issues affecting them must be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and be in good faith.
24. In closing, may we suggest that a complementary, concurrent approach to determining representatives of Indigenous Peoples should be pursued by the President and advisors, with a call for a renewed or new mandate for the UN Special Committee on Decolonization to explore and document the matter of "*the subjugation of the Indigenous Nations of Indigenous Peoples nested within States*"? The Decolonization Committee could look to preparing studies, reports, and recommendations for the eradication of the remaining final vestiges of colonialism remaining within States, including Member States. Such a Committee would be useful from an Indigenous Peoples' point of view, in this 3rd decade of decolonization. It would highlight the breadth and depth and complexity of the continued subjugation of Indigenous Nations of Indigenous Peoples nested within States, including subversive practices employed or supported by States such as describing the Indigenous Peoples nested within their borders as homogenous groups, rather than honourably recognizing and engaging with the self-identified, self-determined Indigenous Nations of Indigenous Peoples harbouring their distinctive manifestations of governance, laws, social and cultural institutions, customs, languages, technologies, knowledge systems, philosophies, access and use of lands and resources, and fundamental eco-centric worldview as to the treatment between humans and the interactions of humans and their living environments.

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25. The right of Indigenous Peoples to maintain distinctive institutions and to create new institutions for self-government, as well as to fully and effectively participate with other Indigenous Nations of Indigenous Peoples and States in international fora, which are charged with tasks and goals to end the evil scourges of poverty, dispossession, denial, subjugation, and the belief of superiority over another, can only be achieved through honourable, honest cooperation with the full and effective participation of all Peoples working together for everyone's benefit.

Consultation on the Participation of Indigenous Peoples at the UN

Response by the Kingdom of Denmark

Revised version of 11 April 2016, including further views by Greenland

Denmark and Greenland welcome the initiative taken by the President of the General Assembly in terms of initiating the process of consultation and the opportunity to provide input. We look forward to engaging in the dialogue during the consultations planned to initiate during the 15th Session of the Permanent Forum on Indigenous Issues in New York. Please find below the response of Denmark and Greenland.

a) Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective;

- Reference is made to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirms that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by them in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- Reference is also made to article 41 of the Declaration, which establishes a duty for the United Nations to contribute to the full realization of the provisions of the Declaration, including through ways and means of ensuring participation of indigenous peoples on issues affecting them.
- In this context, we consider it of utmost importance to ensure that Indigenous Peoples' representatives, organisations and institutions have the possibility and space to exercise their right to participate in meetings of all relevant UN bodies on issues affecting them and not limited to ECOSOC and its subsidiary bodies only.
- To ensure effectiveness in Indigenous Peoples' participation at all levels of the United Nations, the participatory status of their representatives and institutions should be considered in detail. We underline the need for Indigenous Peoples to participate as such, and not only when organised as NGOs, and will look favourable for considering the creation of a new observer category for Indigenous Peoples' participation. A new category could be considered, as the already existing categories do not seem to adequately reflect the unique features of Indigenous Peoples.
- The establishment of an indigenous peoples category would be consistent with the before mentioned articles of the United Nations Declaration on the Rights of Indigenous Peoples that recognise the rights of indigenous peoples to

participate in decision making (article 18) and call on the UN system to ensure the participation of indigenous peoples and to promote respect for and full application of the Declaration (article 41), as well as article 19 that obligates states to consult with indigenous peoples, and articles 3 and 4 that acknowledges indigenous peoples' right to self-government and autonomy.

b) Criteria for determining the eligibility of indigenous peoples' representatives for accreditation as such;

- In terms of eligibility, it should be ensured that Indigenous Peoples' representatives and organisations or institutions are chosen for accreditation by Indigenous Peoples' themselves in accordance with their own procedures without any interference in their internal designation procedures.
- Indigenous Peoples' representatives, organisations and institutions should be actively involved in the process of determining criteria, to ensure that principles and criteria, hereunder application processes, take into account challenges that Indigenous Peoples currently encounter that limits participation at different levels of the United Nations.
- We find that the Expert Mechanism on the Rights of Indigenous Peoples is a good example of a UN process that allows for the participation of Indigenous Peoples, where Indigenous Peoples and member states participate as observers.

c) Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation;

- The creation of a new and independent body should be considered to ensure specific focus and competence on eligibility of Indigenous Peoples only, e.g. under the General Assembly. Such a body should be comprised of both Indigenous Peoples' representatives and Member States. The new body should work independently and be provided with the necessary resources to function adequately.

d) Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative.

- This will depend on the specific procedures and modalities approved for the indigenous peoples' participation.

Southeast Indigenous

Peoples' Center



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Indigenous Participation at the United Nations

Currently all Indigenous Peoples' organizations are considered as NGOs and while it is appreciated that we must start somewhere, we look forward to a more accurate denotation of the broad spectrum of indigenous organizations. Indigenous Peoples' Organizations should self-select to equivalent NGO status or governing authorities. The designation as an indigenous governing authority or indigenous non-governmental organization will allow for more clear means of participating in the 15 specialized agencies and other UN entities, especially the Office of the United Nations High Commissioner for Human Rights (OHCHR). Indigenous organizations should be assisted by a UN entity modeled on the UN Women structure of a separate voluntarily-funded organization as indigenous organizations develop structure and capacity to meet ECOSOC-type consultative status criteria. Indigenous governing authorities will develop capacity and means for participation as enhanced participation in the UN allows for more congenial relations with UN Members commanding the resources of Indigenous Peoples.

Representatives of Indigenous Peoples' government and/or treaty organizations should rotate membership in a body to determine the eligibility of Indigenous Peoples' representatives. In keeping with the UN structure, representatives of governing authorities should have prioritized access to the UN Treaty body. The eligibility body should clarify the information needed from Indigenous Peoples in order to make a determination. The eligibility body of indigenous government representatives would determine their criteria. However, SIPC expects that they would ask for the history of the Indigenous People and how they have worked with neighboring governments prior to invasion, how they have worked with governments since invasion, and how they plan to work with other governments in the future. The eligibility body would likely ask their geographic location, the gender of their representatives, whether they are coastal or land-locked, and how much access they have to technology and hard currency so that they can estimate the representative balance of participation. SIPC expects that the eligibility body would ask the Indigenous People how they have adapted to change and overcome challenges. The eligibility body would likely ask the Indigenous People to provide the map of their territory and a description of their governing practices and essential laws or values. The eligibility body would likely ask the Indigenous People to name their representatives and alternate representatives in writing of the 5 UN languages. The eligibility body would likely recommend to UN agencies capacity-building options developed for Indigenous Peoples in order to integrate indigenous participation effectively across agencies. Some Indigenous Peoples may only interact with one particular UN agency while another Indigenous People may interact with a multitude of UN agencies, for 3, and entities. In

agencies or commissions with high indigenous participation, such as UNEP, departments may be created to facilitate and integrate effective participation.

The UN body determining indigenous participation should be balanced by geographic area and gender representation as well as by degree of access to technology and hard currency. The eligibility body should have advisors available from DESA, NGLS or other UN organs and entities to inform their decision making. The eligibility body should be free to develop an advisory body from among indigenous organizations. The eligibility body should be developed with feedback mechanisms for Indigenous Peoples and indigenous organizations in place to modify the composition of the body as needed by Indigenous Peoples to maximize the efficacy of indigenous participation. The eligibility body should facilitate and inform indigenous participation and coordination at the regional and UN level, allowing the UN to develop the necessary protocols and procedures to allow Indigenous Peoples to communicate effectively regarding indigenous participation.

UN Members should be especially vigilant that the increasing influence of corporations capitalizing on indigenous resources should not impact this body determining the eligibility of Indigenous Peoples' representatives. The efficacy of this body determining eligibility of Indigenous Peoples' representatives should be reviewed by ECOSOC agencies and OHCHR and the reports shared with the General Assembly. As the indigenous body determining accreditation for Indigenous Peoples' governing authorities or organizations develops, especially in the context of climate change, indigenous participation will also develop.

SIPC especially calls colonial powers to support regional-level participation, perhaps in conjunction with existing UN regional commissions and regional iterations of UN agencies and entities, to enable better coordination of indigenous participation on the regional level and allow indigenous participation at the UN level to become more representative. As climate change threatens the future of all Peoples, the international community can especially benefit from the long history of good governance exemplified by healthy indigenous ecosystems. Colonial powers are especially called to aid the international community in addressing climate change by implementing recommendations from human rights treaty committees, the OHCHR, EMRIP, PFII, and Special Rapporteurs regarding Indigenous Peoples' free and uncoerced participation at the regional and international levels of the UN and other international treaty organizations, including those grounded in indigenous laws.

As Indigenous People's enhance the ability of the UN treaty organization to achieve sustainable development goals in the interest of Agenda 2030, we look forward to a human rights approach to indigenous participation at the UN.

Wakerahkats:te, Iakoiane
Mohawk Nation Territory
Akwasasne

April 8, 2016

RE: Participation of Indigenous Peoples at the United Nations

H.E. Mogens Lykketoft, President
The United Nations General Assembly
Electronic delivery to: ipadvisers@un.org

She:kon/Greetings President H.E. Mogens Lykketoft:

I am thankful that you have peace within you. I am Wakerahkats:te, Bear Clan Mother within the Mohawk Nation of the Haudenosaunee, keeper of the Bear Clan names and advocate for women's voices around the world. I send this letter to bring a message of peace, love and harmony to all people of the world, carrying the voices of my ancestors.

Actions taken by government or corporate interest affects all peoples of the world, and indigenous perspective is generally not accounted for when these bodies act to exploit or protect resources, or to protect people and their interests. Because indigenous people represent such diversity and are located around the world, we can see how challenging it is to hear and account for the multitude of indigenous governments and their people. However, this should not preclude our direct and active participation within all verticals within the United Nations. It would strengthen the power of the United Nations and expand its intellectual capacity to create peaceful and sustainable solutions for the issues facing our world today.

For the past 500 years, our communities were crushed and devastated by colonization that included the stealing and pillaging of our lands and people, mistreatment and abuse of the same. Many among our people find themselves in a state of despair and reeling from historical and current traumas that show themselves in forms of violence, drug abuse and suicide that are rampant in our communities. We are fortunate that awareness and healing have sprung into the forefront across our communities, and the primary source for healing and wellness has come from the continued strength of our cultural teachings and traditional methods.

The Haudenosaunee have been instrumental in shaping and influencing democratic processes for leading countries worldwide as a direct result of our influence on the roots of American democracy. The Haudenosaunee influence upon the Founding Fathers is well documented, and there is a direct correlation between our governing systems and the structure of the United States government and its principles of

democracy. One key element that was omitted from the formation of the US government was the role of women, which is instrumental to the highly intellectual, equitable and peaceful democracy that has governed the Haudenosaunee people for thousands of years. Women in our communities have always been leaders, landowners, homeowners and were esteemed because of our sacred life giving ability and connection to Mother Earth, the truest life-giving energy flows directly through women. In the Haudenosaunee communities, women are sacred and have always been given honor and reverence. Because of our elevated status as women, non-Native women in the United States were inspired to create the Women's Suffrage Movement.

As a traditional leader among the Haudenosaunee, the People of the Longhouse, I have personally witnessed the wellspring of empowered women who seek and act upon creating healthy communities by serving our youth, serving those with broken spirits and simultaneously creating avenues for economic change. This story prevails among indigenous nations and communities around the world. I believe that it is my imperative to express the importance of including indigenous people, and specifically indigenous women into the processes of governance, policy making and processes within the United Nations.

The Haudenosaunee have practical and ancient teachings and philosophies that can be applied far and wide across all spectrums of governance and leadership. Because of the demonstrated value of our contributions to society, worldwide, and despite all the damaging effects of colonization that brought devastation to our people, our culture and governing systems persist. Our systems are methods centered in implementations of peace, democracy, and equity for all people, in the truest sense. We managed to bind five warring nations together under a principle of peace called The Great Law that has persisted for more than a 1,000 years. Our ways came to influence and shape the hearts and minds of the founders in Western ideology, thought processes and governance. It is now time for our people to once again help influence the world in eco-economics and return to sustainable and peaceful ways to live on Mother Earth such that the future of humankind's existence may thrive.

We have not, and are not, espousing a religious dogma in any sense, but our ways stem directly from living with the land and understanding humankind's relationship with the natural world. From this perspective, the Haudenosaunee formed one of the most highly intellectual processes of governance, democracy and equity the world has ever known.

The indigenous connection to Mother Earth is centered in the sacred. It is a connection that cannot be quantified, but it can be qualified in that indigenous people have lived the longest in their respective lands since time immemorial. We inherently understand knowledge passed down through the generations how to best care for and live in harmony with the land. We know the sacred medicines that will heal, we know how to read the lands and Mother Earth and how to best respond to her needs and utilize her resources that will replenish and provide clean lands

and waters for future generations. In respect to our world and her ability to continue to provide, it is imperative to incorporate the values of indigenous people to create proper usages and respect of Mother Earth's resources to ensure the longevity of humanity.

In closing, it is my recommendation that the United Nations include indigenous peoples into all verticals of its governance, policy-making and processes, and to consider hemispheric representation of indigenous peoples within the United Nations. There is a Universal truth and value to our teaching that should not be overlooked during such a critical time in the social, economic, and ecological climate of our world.

In the Spirit of Peace,

Skennen Aken:hak,
Wakerakats:te, Iakoiane

INDIAN LAW RESOURCE CENTER

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April 8, 2016

Enabling the Participation of Indigenous Governing Institutions At the United Nations

Written contribution to inform the electronic consultation as called for in A/RES/70/232

SUBMISSION SUPPORTED BY THE ABORIGINAL COMMISSION ON HUMAN RIGHTS AND JUSTICE, THE CITIZEN POTAWATOMI NATION, THE MASHANTUCKET PEQUOT TRIBAL NATION, THE METIS NATION, THE TONAWANDA SENECA NATION, AND THE UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

The Indian Law Resource Center is a non-profit legal and advocacy organization established in 1978 by American Indians. The Center is dedicated to protecting the rights of Indian and Alaska Native nations and other indigenous peoples throughout the Americas. The Center, among other work, has supported indigenous nations and organizations in the negotiation of the Declaration on the Rights of Indigenous Peoples and in the World Conference on Indigenous Peoples. The Center has been in consultative status with the Economic and Social Council since 1981.

The following observations and proposals of the Center and supporting indigenous nations and organizations are intended to clarify the need for a new status particularly for **indigenous governing institutions** at the United Nations and to assure that the new status, the necessary standards for accreditation, and the rules for participation will permit indigenous governing institutions to participate and contribute effectively in the work of the United Nations.

I. The need for a new status for indigenous governing institutions

Indigenous governing institutions are not presently recognized by the United Nations system in any formal sense. Such institutions are entirely distinct from voluntary non-governmental organizations, including those indigenous organizations organized as civil society organizations that have received consultative status from the Economic and Social Council.

The United Nations, through the Outcome Document of the World Conference on Indigenous Peoples, has recognized the important distinction between voluntary indigenous organizations and indigenous governing institutions, as well as the need to remedy the situation by enabling indigenous governing institutions to participate in the work of the United Nations.

The World Conference on Indigenous Peoples was held, in part, "to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples,"¹ and it resulted in an outcome document² that included a commitment to consider "ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, including any specific proposals made by the Secretary-General. ..."³ Following the World Conference, the General Assembly outlined a process to enable the participation of indigenous representatives and institutions (indigenous governing institutions) in the work of the United Nations in its annual resolution on the rights of indigenous peoples.⁴

Many international law standards relating to the rights of indigenous peoples, such as those established under the UN Declaration, apply to indigenous peoples and their governments or other decision-making institutions, not to voluntary indigenous organizations constituted as NGOs or civil society organizations. Article 18 of the Declaration states the right of indigenous peoples to participate in decision-making in matters affecting their rights through representatives chosen by themselves in accordance with their own procedures. Articles 33 and 34 further recognize the right of indigenous peoples to determine, promote, develop, and maintain their institutional structures and membership in accordance with their own procedures. Article 19 recognizes the duty of states to consult and cooperate with indigenous peoples through indigenous peoples' governing or representative institutions before adopting or implementing measures that may affect them. Any process to enable the participation of indigenous governing institutions at the United Nations must promote respect for and full application of all of these provisions of the Declaration.

Past reports of the Secretary-General, the Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples, and the Permanent Forum on Indigenous Issues provide further evidence of the need for a new status for indigenous governing institutions to participate in the work of the United Nations.

In 2011, the Expert Mechanism recommended: "The United Nations should, in accordance with the UN Declaration on the Rights of Indigenous Peoples, establish a permanent mechanism or system for consultations with indigenous peoples' governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations."⁵

1 G.A. Res. 65/198, ¶18, U.N. Doc. A/RES/65/198 (Dec. 21, 2010).

2 G.A. Res. 66/295, ¶¶9-10, U.N. Doc. A/RES/66/295 (Sept. 17, 2012).

3 G.A. Res. 69/2, ¶33, U.N. Doc. A/RES/69/2 (Sept. 22, 2014).

4 G.A. Res. 70/232, ¶19, U.N. Doc. A/RES/70/232 (Dec. 23, 2015).

5 The Expert Mechanism on the Rights of Indigenous Peoples, *Final report of the study on indigenous peoples and the right to participate in decision-making*, ¶36, delivered to the Human Rights Council, U.N. Doc. A/HRC/18/42 (August 17, 2011).

In 2012, at the request of the Human Rights Council,⁶ the Secretary-General prepared a report on the ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives, recognizing that such institutions are "not always organized as non-governmental organizations."⁷

In 2015, at the request of the General Assembly in its World Conference Outcome Document, the Secretary-General prepared a second report on the topic, recommending states "move forward on developing measures to enable the effective participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, through representatives chosen in accordance with their own procedures."⁸ Also in 2015, the Permanent Forum on Indigenous Issues recommended that the General Assembly establish "a new procedure, in collaboration with indigenous peoples, to guarantee the effective participation of representatives of indigenous peoples and, in particular, indigenous governance institutions, in the seventieth session of the Assembly, including a corresponding accreditation mechanism."⁹ Such United Nations resolutions and reports provide a clear and compelling need for indigenous peoples' representatives and institutions (indigenous governing institutions) to participate directly in the work of the United Nations through the creation of new and distinct measures.

Indigenous individuals and communities have so far participated in the work of the United Nations in a number of ways: first, as indigenous peoples' organizations in the work of the Expert Mechanism and Permanent Forum; second, as a matter of necessity, as non-governmental organizations in consultative status with the Economic and Social Council in the work of the Human Rights Council; finally, as non-governmental or civil society actors through ad hoc mechanisms in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, in meetings of the Conference of the Parties to the Convention on Biological Diversity, in the UN Environment Programme following adoption of the Indigenous Peoples Policy Guidance in 2012, and the International Fund for Agriculture Development following adoption of its Policy on Engagement with Indigenous Peoples in 2009. Indigenous individuals, as part of voluntarily-constituted civil society organizations, thus have several well-established mechanisms for being accredited to participate in the work of the United Nations. Such procedures should be maintained at the present time. Improvement may be needed in these procedures, but it was not called for by the World Conference Outcome Document and is thus beyond the scope of this consultative process.

Yet, none of these existing participation processes or mechanisms recognizes the distinct political, social, and legal nature of indigenous peoples' governing institutions. Indigenous

⁶ J 13.HRC/RES/18/8 (29 Sept. 2011).

⁷ The Secretary-General, *Report of the Secretary-General on the Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them*, i1, delivered to the Human Rights Council, U.N. Doc. A/HRC/21/124 (2 July 2012).

⁸ The Secretary-General, *Report of the Secretary-General on the Progress made in the implementation of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, i48, delivered to the Economic and Social Council, U.N. Doc. A/70/84-E/2015/76 (18 May 2015).

⁹ The Permanent Forum on Indigenous Issues, *Report on the fourteenth session (20 April-1 May 2015)*, i7, delivered to the Economic and Social Council, U.N. Doc. E/2015/43-E/C.19/2015/10.

governing institutions are unable to participate in their own right in important meetings and activities which may affect them. Without a special invitation, indigenous governing institutions, as such, cannot participate in, even to simply attend and observe, sessions of the Human Rights Council or the Third Committee of the General Assembly, which adopt annual resolutions on the rights of indigenous peoples. Nor can they participate in any meetings of the Commission on the Status of Women or other functional commissions of the Economic and Social Council.

For indigenous governing institutions, pursuing the accreditation process as a non-governmental entity or as a civil society actor is entirely inappropriate and inadequate. They are duly-constituted governments which represent their members or citizens. For these reasons, this consultative process should focus solely on the procedures to enable the participation of indigenous governing institutions at the United Nations, as called for in the World Conference Outcome Document and mandated by General Assembly resolution 70/232.

The summary of comments of states and others in the 2015 electronic consultation to inform the Secretary-General's report on progress made in the implementation of the outcome document of the World Conference on Indigenous Peoples¹⁰ shows explicitly the understanding that this consultative process is intended to establish a new specific category for indigenous governing institutions to participate in the work of the United Nations. Responses emphasized that this new category or status should be distinct from the NGO process and should be reserved for indigenous governing institutions only. In their responses, states also recognize that current opportunities for participation are inadequate and not reflective of the unique relationship of indigenous peoples' governing institutions with the state where they live. Importantly, the responses make clear that the intent of this consultative process is to "recognize these indigenous peoples' institutions and to establish a new indigenous category or observer status" and that the new process "should in no way prejudice indigenous peoples' non-governmental organizations that can and should continue to work within existing ECOSOC processes."¹¹

II. What rights of participation should indigenous governing institutions have?

Whatever new process, procedure, or mechanism is decided upon to enable the participation of indigenous governing institutions at the United Nations, the new status should ensure that indigenous governing institutions are able to participate in activities of the United Nations at the very minimum in a manner comparable to that exercised by non-governmental organizations in consultative status with the Economic and Social Council. This level of participation would include, among other things, attending meetings, submitting written statements, making oral statements, and proposing agenda items, all subject, of course, to reasonable rules for the conduct of meetings. Further, due to their political and legal nature as representative bodies of their citizens or members, indigenous governing institutions should have certain enhanced rights of participation beyond what non-governmental organizations enjoy, such as priority over non-governmental organizations with regard to seating and order of

¹⁰ Participation of indigenous peoples at the United Nations: Overview of responses by indigenous peoples and Member States to a 2015 questionnaire ("the summary of responses"), available at: http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/questionnaire_overview7Briefing.pdf.

¹¹ *Id*

speaking. Indigenous governing institutions should also enjoy relaxed limitations and rules on the length of their oral statements and written submissions.

Indigenous governing institutions should be able to participate in an effective and meaningful way in all relevant United Nations meetings and bodies, and not just the indigenous-specific mechanisms such as the Permanent Forum on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples. Such bodies would include those with direct implications for indigenous interests such as the Economic and Social Council and its subsidiary bodies -the Commission on the Status of Women, the Commission on Social Development, and the Permanent Forum on Indigenous Issues; the Human Rights Council and its subsidiary bodies -the special procedures and the Expert Mechanism on the Rights of Indigenous Peoples; and the treaty bodies and relevant meetings of the General Assembly and its Main Committees. This preliminary listing is not intended to be exhaustive or to exclude participation in other UN bodies, mechanisms, or specialized agencies.

III. Who will the new status apply to?

The World Conference Outcome Document specifies that the new status shall apply to indigenous peoples ' representatives and institutions. For the purposes of our submission, we refer to such groups as indigenous governing institutions, which are the authoritative and duly comprised decision-making bodies of their constituent indigenous peoples. Such bodies may be known by a number of different blanket terms such as, inter alia, customary, traditional, or constitutional governments, indigenous parliaments, assemblies, or councils. The new status, whatever it is called, should apply only to such duly established indigenous governing institutions recognized by their own indigenous constituents as such, and acting in a representative governmental capacity.

It appears very likely, perhaps certain, that it will be necessary to assure that the new status is limited to governing institutions of *indigenous peoples*, as that term is used and understood in the United Nations and other intergovernmental bodies. Although there is no universally agreed definition of who is "indigenous," the term has a generally accepted meaning that has developed over the past 30 years in United Nations bodies and other intergovernmental organizations, including the International Labour Organization, the World Bank, and the Inter-American Development Bank, among others. It will be important to assure that the new status and rules for indigenous governing institutions apply only to *indigenous* peoples and not to ethnic, national, linguistic, racial, or other groups that are not, in fact, indigenous.

IV. The accrediting body

The General Assembly should decide to use an existing committee or working group or to create a new committee or working group to carry out the accreditation process, that is, to decide whether an applicant is qualified to participate as an indigenous governing institution in the work of the United Nations. The UN Charter recognizes the authority of the General Assembly to create such a committee or working group, providing that the "General Assembly may establish such subsidiary organs as it deems necessary for the performance of its

functions."¹² And the United Nations Rules of Procedure further reference the "desirability of the Main Committees' making use of subcommittees or working groups."¹³

The committee or working group must include some indigenous government leaders or, at minimum, must consult with indigenous government leaders, experts, or advisers. The committee should be authorized to recommend to the General Assembly the accreditation of indigenous governing institutions that meet the requirements. Creation of a separate accreditation process and accrediting body by resolution of the General Assembly has occurred, for example, with respect to National Human Rights Institutions.

In order to ensure adequate participation by indigenous governing institutions, the United Nations system, as appropriate, should provide the necessary financial and technical support for indigenous peoples' governing institutions seeking to participate in the work of the United Nations.

V. The accreditation process and criteria

To do the important work of processing applications and recommending the accreditation of indigenous governing institutions, there must be a new process with new rules and standards. Accreditation is the formal decision recognizing an indigenous government as qualified to participate in the United Nations. Accreditation standards must be strong but flexible and responsive to the differences among indigenous governing institutions in various regions of the world.

The process of accreditation for indigenous governing institutions must assure that applicants are in fact indigenous and are genuine, duly chosen representatives of the people and governing institution they purport to represent. While the accreditation body or committee could be responsible for elaborating standards and procedures for accreditation, a preliminary set of criteria for consideration of applications follows.

Self-identification alone should not be sufficient for accreditation though it must be taken into consideration. Rather, an applicant should provide documentary or other evidence of its identity as indigenous and of its character as an authentic indigenous governing body of the indigenous people concerned. No particular form or structure of government should be required, and all genuine, indigenous governing institutions should have an opportunity to apply and to demonstrate their qualifications for accreditation.

Applicants should be requested to provide, initially, among other things, documentation or other reliable evidence establishing their existence as a government or governing institution, authorizing the application to be made, and designating one or more representatives. Documentation could include written or oral testimony or statements. Each applicant should also,

¹² U.N. Charter art 22.

¹³ See Rules of Procedure of the General Assembly (embodying amendments and additions adopted by the General Assembly up to September 2007), *Annex IV, Conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly*, ¶ 66, *establishment of subcommittees or working groups* A/520/Rev.17 (United Nations New York 2008).

for example, briefly describe the people, indigenous nation, or community that it represents, the governing powers or authority that it exercises, and the principal officials or office holders in the government. The committee should consider evidence and views from all relevant sources.

State recognition should be a consideration for accreditation, but cannot be a necessary criterion. The status of indigenous governments does not and must not depend on recognition by the states where they are located. Recognition by other indigenous peoples, however, can serve as some evidence that an indigenous governing institution is genuine and entitled to participate in the United Nations.

We are prepared to recommend and discuss further, more detailed issues and procedures for accreditation. We look forward to an appropriate time to submit further and more detailed recommendations. We also look forward to reviewing the proposals and comments of others and to the opportunity to respond to those proposals and comments.

VI. Benefits to the United Nations

The United Nations has now recognized the need to address barriers to the participation of indigenous governing institutions in the work of the UN system. Indigenous governing institutions have valuable contributions to make to the world community, and in 2016, their regular and permanent participation at the United Nations should be ensured by providing full recognition of their governmental status and by permitting them to participate in United Nations meetings and activities.

Indigenous governing institutions, duly-constituted and representing their constituents, members, and peoples, are the best and most appropriate actors to speak to matters that affect them in the United Nations, such as violence against indigenous women and protecting indigenous cultures, lands, and resources. The 2012 Secretary-General's report recognizes the functional advantages input from indigenous governing institutions provides to the United Nations system. The summary of responses to the 2015 Secretary-General's report further notes that indigenous peoples bring important perspectives to the work of the United Nations not only on indigenous issues, but to a whole range of themes considered by the United Nations.¹⁴

Enabling indigenous governing institutions greater and permanent participation in the United Nations will mean representative indigenous voices will always be heard. Enabling indigenous governing institutions to speak for themselves is not only the right thing to do in principle to meet the call of the World Conference Outcome Document, but it will also yield significant benefits to the United Nations system and result in more informed deliberations, better decisions, more successful programs, greater security for indigenous rights, and progress toward achieving the purposes of the Declaration.

¹⁴ Participation of indigenous peoples at the United Nations: Overview of responses by indigenous peoples and Member States to a 2015 questionnaire ("the summary of responses"), available at: http://www.un.org/esa/socdev/unfrid/documents/2016/Doc-updates/questionnaire_overview7Briefing.pdf.

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Rights of Indigenous Peoples' To Proper Participation at the U.N.

Submitted by
The National Congress of American Indians (NCAI) and the Native American Rights Fund
(NARF)
(NGOs' in Special Consultative Status with Economic and
Social Council of the United Nations)



National
Congress of
American
Indians



March 31, 2016

It is indigenous peoples that have the right of self-determination recognized in Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) and it is indigenous peoples that have the right under Article 18 of the Declaration "to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures" Likewise, Article 41 of the Declaration provides in relevant part that "Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established." These provisions make clear that it is self-governing entities that seek a new status at the UN. Likewise, the Report of the Secretary General of July 2012, A/HRC/21/24 recognizes the right of self-governance as the key factor which distinguishes indigenous peoples from non-governmental organizations (NGOs), even those non-governing indigenous organizations which are also properly classed as NGOs. Section II. A. However, the creation of a new status should not adversely affect the ability of Indigenous NGOs to continue operating as they are now doing.

Criteria for accreditation should take into account the following considerations:

- The distinction between governing and non-governing entities must be maintained.
- Evidence that the applicant is the governing body of an indigenous people, such evidence to be appropriate to the circumstances of that people. In some cases this

may include written constitutions or other organizing documents, but in other cases this may not be appropriate.

- The criteria for accreditation should be sufficiently flexible to adequately accommodate regional differences of indigenous peoples' systems of governance.
- Self-identification should be given great weight.
- Present recognition by a member state should be given great weight.
- Recognition by other indigenous peoples should be given great weight.
- Present recognition by a member state should in no sense be a requirement.
- A new body or committee should be established by the General Assembly to process applications for accreditation. This body should include representation from indigenous peoples from around the world.

The new status should be a new tier of Permanent of Observer status for Indigenous Peoples. Under the new status, indigenous peoples would have the following rights, by way of illustration and not limitation:

- The right to participate in meetings in all UN bodies which the Indigenous peoples judge to affect their interests
- The right to name the representative(s) of their choice who will represent them at a given meeting.
- The right to inscribe on the list of speakers under agenda items at such meetings;
- Priority in seating and order of speaking in such meetings .
- The right to make interventions, including during consultations on draft resolutions;
- The right to propose agenda items;

- The right to submit documents and communications relating to the work of the General Assembly;
- Adequate seating arrangements for indigenous peoples at the relevant meetings;
- In order to ensure adequate participation by indigenous peoples, the UN system should provide adequate financial and technical support, including for capacity building. Notice of the availability of financial support and other assistance for participation of indigenous peoples should be distributed broadly and the process for allocating financial and technical support should be transparent and inclusive.

National Congress of American Indians

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Native American Rights Fund

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April 8, 2016

Re: request for proposals on how to enable the effective participation of Indigenous Peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, through representatives chosen in accordance with their own procedures.

Respectful Greetings,

The International Indian Treaty Council (IITC) is pleased to submit our comments and proposals for this important dialogue towards implementation of Operative Paragraph 33 of the United Nations World Conference on Indigenous Peoples addressing the effective participation of Indigenous Peoples' representatives and Institutions within the UN System.

The IITC, founded in 1974, is an organization of Indigenous Peoples, Nations, Tribes, Societies, Councils, networks and organizations from North, Central and South America, the Caribbean, Arctic and Pacific. A list of IITC's affiliates is enclosed, and includes Indigenous Peoples' governments, authorities, Councils and other kinds of representative entities.

In 1977 IITC became the first Indigenous organization to receive Consultative Status with the United Nations Economic and Social Council (ECOSOC). In 2011, IITC was the first Indigenous organization to be upgraded to "General Consultative Status" in recognition of its long-standing participation in many areas of the United Nations system representing the rights, concerns and struggles of Indigenous Peoples.

One of IITC's written guiding principles affirms that "Indigenous Peoples speak for themselves before the world community" as an integral aspect of self-determination and free prior and informed consent. The issue of representation and standing of Indigenous Peoples' representatives at the United Nations, including elected and traditional leaders and authorities, Parliaments, Councils and other governing bodies has always been important for the IITC and its affiliates. It is closely aligned with the rights affirmed in the UN Declaration on the Rights of Indigenous Peoples including, inter alia, Articles 3, 5 and 18.

Regarding our proposals for improved methods and status of participation for Indigenous Peoples' representatives and institutions, the IITC reaffirms our support for the following recommendation from **the Alta Outcome Document from the** Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples, 10 – 12 June 2013, Alta Norway, *Para. 10 Theme 2: United Nations system action for the implementation of the rights of Indigenous Peoples:*

"Pursuant to the universal application of the right of self-determination for all Peoples, recommends that the UN recognize Indigenous Peoples and Nations based on our original free existence, inherent sovereignty and the right of self-determination in international law. We call for, at a minimum, permanent observer status within the UN system enabling our direct participation through our own

governments and parliaments. Our own governments include *inter alia* our traditional councils and authorities;”

In addition we express our support for the proposals on this topic contained in the **REPORT OF THE OPEN-ENDED MEETING OF INDIGENOUS PEOPLES ON THE FOLLOW-UP TO THE WORLD CONFERENCE ON INDIGENOUS PEOPLES FOCUSING ON OP 28 AND OP 33 OF THE WCIP OUTCOME DOCUMENT which took place March 3-5, 2015 in Geneva Switzerland.** The Asian Indigenous Peoples Pact, the International Indian Treaty Council, the National Congress of Australia’s First People and the Sami Parliament of Norway hosted this open-ended meeting which brought together an ad-hoc group of representatives of Indigenous Peoples institutions and organizations from all seven regions to discuss the follow-up of the World Conference on Indigenous Peoples, in particular paragraphs 28 and 33 of the outcome document. The purpose of the meeting was to discuss informally about possible ways forward including potential options for further discussion in the regions.

Regarding OP 33 the following proposals were included in the report, which IITC continues to support and endorse:

1. Consistent with the right of self-determination, we strongly recommend broad, full and effective participation in all bodies of the United Nations in terms of where Indigenous Peoples’ representative institutions themselves determine that issues under discussion in those bodies and processes would affect their rights. Indigenous Peoples’ representative institutions will determine which bodies and processes are relevant to their rights.
2. We emphasize the UN Declaration on the Rights of Indigenous Peoples as the minimum standard for Indigenous Peoples’ participation, in particular Articles 3 and 18.

In this regard, we also recall Articles 5, 6, 26 and 41.

3. The current rules for engagement are deficient for ensuring the full and effective participation of Indigenous Peoples’ representative institutions in United Nations processes.
4. We recall Theme 2, paragraph 10 of the Alta Outcome Document, which calls for “*at a minimum, permanent observer status within the UN system enabling our direct participation through our own governments and parliaments. Our own governments include inter alia our traditional councils and authorities*”. The focus and primary purpose of Operative Paragraph 33 is to find ways and means for these representative

bodies to function under a new status allowing them to participate fully and effectively.

5. We recall the Report of the United Nations Secretary-General, “*Ways and Means of Promoting Participation at the United Nations of Indigenous Peoples’ Representatives on Issues Affecting Them*”, stating, “[t]o the extent that it has been permitted to date, indigenous peoples’ participation at the United Nations has been a positive experience. It has enabled indigenous peoples who had been historically excluded to work together peacefully and in partnership with States to advance their issues and rights. It has been a process of mutual trust-building, premised on equality and equity among stakeholders, and had led to fruitful outcomes and greater commitments by indigenous peoples, States and

the United Nations system to strengthen recognition and respect for indigenous peoples' rights." [A/HRC/21/24].

We emphasize our preference in this regard for the mechanism for Permanent Observer Status (POS) to be amended to specifically include a credential status for Indigenous Peoples' Representative Institutions. The criteria should be partially based on self-identification, but should include questions regarding traditional/precolonial land base and historical and current governing functions and structures. We are well aware of the regional and country specific differences which include the failure of some States to recognize Indigenous Peoples and their governing institutions. This must not be an impediment to the consideration of Indigenous Peoples' governments, governing bodies and representative institutions under this process.

The value of this approach is that it utilizes a current United Nations process and mechanism which provides access to high-level accreditation and participation that is not currently accessible through participation as Non-Governmental Organizations (NGOs). It avoids the need to create a new separate process that may or may not provide enhanced or additional levels of access and participation than is already available to Indigenous Peoples as Consultative Status NGOs. Indigenous Peoples could either utilize the categories currently available under the POS, or if preferred by all parties, the UN General Assembly could implement an additional "Indigenous Peoples" category for participation under the Permanent Observer Status.

Indigenous Peoples will need to be consulted regarding the specific criteria and process for this new POS category if that is the option that is decided upon by the General Assembly. However, if so, all rules and opportunities for participation in the UN General Assembly and all other UN bodies currently available to other entities holding POS must also be afforded to Indigenous Peoples Representative Institutions credentialed in this way.

The IITC looks forward to further dialogue on this matter. We do not object to our contribution being posted on the UN Web Site and hope that it can be helpful to this discussion. We thank you for your work and express our best regards,



Andrea Carmen

Executive Director, International Indian Treaty Council

Rights of Indigenous Peoples to International Repatriation and Proper Participation
at the U.N.

Submitted by
The Association on American Indian Affairs (AAIA)



Association on American Indian Affairs (AAIA)

April 2, 2016

The Association on American Indian Affairs (AAIA) is a 94-year-old American Indian advocacy organization located in the United States, which works in close partnership with Indigenous Peoples and has a Native American Board of Directors. It has drafted important national legislation, such as the Indian Child Welfare Act (ICWA), National Museum of the American Indian Act (NMAIA), and the Native American Graves Protection and Repatriation Act (NAGPRA). Historically, it has been an important advocate for Indigenous sacred lands protection, repatriation, and cultural resources protection. The AAIA currently runs the International Repatriation Project, which is advised by the Working Group on International Repatriation, composed of Indigenous Peoples, Native Nations, and others advocating for Indigenous international repatriation on the local, national, and international levels.

The AAIA submits the following to the appointed advisors and the U.N. General Assembly President on matters pertinent to Indigenous Peoples and, in particular, the rights of Indigenous Peoples to international repatriation and proper participation at the U.N.:

1. International repatriation is a human right. (See Joint Submission made to the UNEMRIP by the Hopi Tribe, Hui Malama I Nii Kiipuna O Hawai'i Nei, the San Carlos Apache Tribe, the Sault Ste. Marie Tribe, Little Traverse Bay Bands of Odawa Indians, the AAIA, and IITC to the UNEMPRIP, 8th session, July 20-24, 2015, attached.) Indigenous Ancestors, funerary objects, sacred objects, and cultural patrimony have been taken from their Peoples of origin and stolen from graves without free, prior, and informed consent. Important documents, such as the U.N. Declaration on the Rights of Indigenous Peoples, in Articles 11 and 12 support international repatriation, stating in relevant part in Article 12(2):

States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

In addition, Operative Paragraph 27 of the Outcome Document of the High Level Plenary Meeting of the U.N. General Assembly, known as the World Conference on Indigenous Peoples (A/69/L.1), further requires the development of mechanisms to be created within the U.N. for international repatriation, stating:

We affirm and recognize the importance of indigenous peoples' religious and cultural sites and of providing access to and repatriation of their ceremonial objects and human remains in accordance with the ends of the United Nations Declaration on the Rights of Indigenous Peoples. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.

Meaningful consultation lies at the heart of the International Repatriation process, whereby Indigenous Peoples are involved early in the planning process with adequate time, notice, and opportunity to participate. Meaningful consultation should be ongoing throughout the development of these mechanisms and any repatriation.

We recommend that the U.N. engage in a 3-year meaningful consultation with Indigenous Peoples to begin to develop mechanisms to create fair, transparent, and effective mechanisms for international repatriation with the direct involvement of nation-states. In addition, so as to prevent NGO gate keeping that prevents Indigenous Peoples from having direct contact with the U.N. on this very important issue, we recommend that an individual who works for the U.N. Permanent Forum on Indian Issues be designated as the contact and coordinating person, so that Indigenous Peoples may effectively communicate with them directly. In the event that this issue comes under the U.N. Expert Mechanism on the Rights of Indigenous Peoples, we also recommend that a direct U.N. designate be made so that all Indigenous Peoples may have the opportunity for direct contact with the U.N. Meaningful consultation with the U.N. lies at the heart of self-determination of Indigenous Peoples.

In addition, the U.N. should be aware that each Indigenous People will have different cultural protocols for repatriation, cultural requirements for the protection of sacred information, and cultural protocols for the ongoing care and eventual repatriation of Indigenous Ancestors. All of this must be taken into account, so that the development of mechanisms for consultation and repatriation fully respect Indigenous Peoples, Indigenous cultures, and Indigenous religions. While a 3-year period may begin to develop mechanisms for international repatriation, consultation pertaining to this issue should be ongoing and become a permanent issue for review, updates, and information at the U.N.

2. The AAIA asserts that it is vitally important for the United Nations and other bodies to understand the culturally sensitive nature of international repatriation. Ancestors, funerary objects, sacred objects, and cultural patrimony (collectively "cultural items") may need to be protected. In other words, the display and publication of these remains and cultural items may not be culturally appropriate. It is the right of Indigenous Peoples to self-determine the processes, protocols, and dissemination of this information. This self-determined process should come forward during consultations.
3. The AAIA also supports the submission made by the National Congress of American Indians and the Native American Rights Fund pertaining to the "Rights of Indigenous Peoples' To Proper Participation at the U.N." As stated by NCAI and NARF, Indigenous Peoples have the right of self-determination, which has been recognized in the U.N. Declaration on the Rights of

Indigenous Peoples (UNDRIP) and that self-governance has been recognized within the Report of the Secretary General of July 2012, A/HRC/21/24, “which distinguishes indigenous peoples from non-governmental organizations (NGOs). The AALA supports the establishment of a new status at the U.N. for self-governing Indigenous entities. (See submission made by NCAI and NARF.)

IP REPRESENTATION AND PARTICIPATION IN THE UNITED NATIONS AND OTHER BODIES

A. Legal Framework

We strongly support the representation and participation of the Indigenous Peoples in the United Nations and in other appropriate bodies of the UN system as a step forward in attaining the purposes and principles of the United Nations particularly in, achieving, international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction (Section 3, Article 1, Charter of the United Nations). Such is further articulated by subsequent UN instruments and declarations, to wit: United Nations Declaration on Rights Indigenous Peoples, ILO 169, ICERD and other UN instruments.

The 1987 Philippine Constitution recognizes, promotes, and protects the rights of indigenous cultural communities within the framework of national unity and development.¹² Towards this end, IPRA was promulgated. Considered a landmark legislation, IPRA upholds the ICCs/IPs' rights to: Self-Governance and Empowerment; Cultural Integrity; Ancestral Domains/Lands; and Social Justice and Human Rights.

The State recognizes that the ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. The State also promotes the full participation of the Indigenous Peoples in the formulation, implementation, and evaluation of policies, plans and programs for national, regional and local development which may directly affect them. At present, there are 2,708 IP representations in various local legislative and special bodies.¹³ IPRA has also mandated NCIP to facilitate IP participation on the national and international conventions and conferences.¹⁴

¹² Section 22, Article II, 1987 Philippine Constitution

¹³ Section 17, Chapter IV on Right to Self-Governance and Empowerment Section 17. Right to Determine and Decide Priorities in Development.

¹⁴ Part VI, Section VI (f) The Office of Empowerment and Human Rights of the National Commission on Indigenous Peoples (NCIP) will facilitate the participation of ICCs/IPs in all national and international fora where their effective representation is required. Chapter VII, Section 44 (q) NCIP to represent the Philippines ICCs/IPs in all international conferences and conventions dealing with Indigenous Peoples and other related concerns.

B. The IPs in the Philippines

IPRA defines the indigenous peoples in the Philippines as follows: *Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced.*¹⁵

Proceeding from the legal mandate NCIP is now gearing towards a comprehensive ethnography of Indigenous Peoples and Census of IP population. As of March 30, 2016, the National Commission on Indigenous Peoples have surveyed and certified 206 Ancestral Domains with a total area (land and water) of 5,110,393.22 hectares registering 1,108,223 CADT Rights' holders. At present, NCIP is processing for delineation and titling totaling 3,177,781 hectares ancestral domains and 15,750 hectares ancestral lands. 6,538,886 hectares identified ancestral domains without applications. 83,501 hectares ancestral lands no application . The total IP domains/lands/water identified ¹⁶is 14,943,602 hectares.

PROPOSED PROCEDURE FOR IP REPRESENTATION IN THE UNITED NATIONS

A. Mandate of the IP Conferences

In the 18 years of the implementation of Republic Act 8371, the NCIP has been working with the CADT Rights Holders for IP representation.

The NCIP constituted and institutionalized the three clusters of CADT Holders Forum in Luzon, Visayas and Mindanao into an IP Conference. The three cluster conferences serve as the venue where issues and concerns affecting the various CADTs and ICCs/IPs are discussed. These conferences constitute the IP National Conference. The Functions of IP National Conference are as follows:

1. Policy formulation and development;
2. Assists NCIP in the screening of NGOs and other “migrants” in Ancestral Domains (two layers of operations, 1. Cluster conference level and 2. National Conference);
3. Assists NCIP in the review and evaluation of all project proposals emanating from CADT areas and give final recommendations;

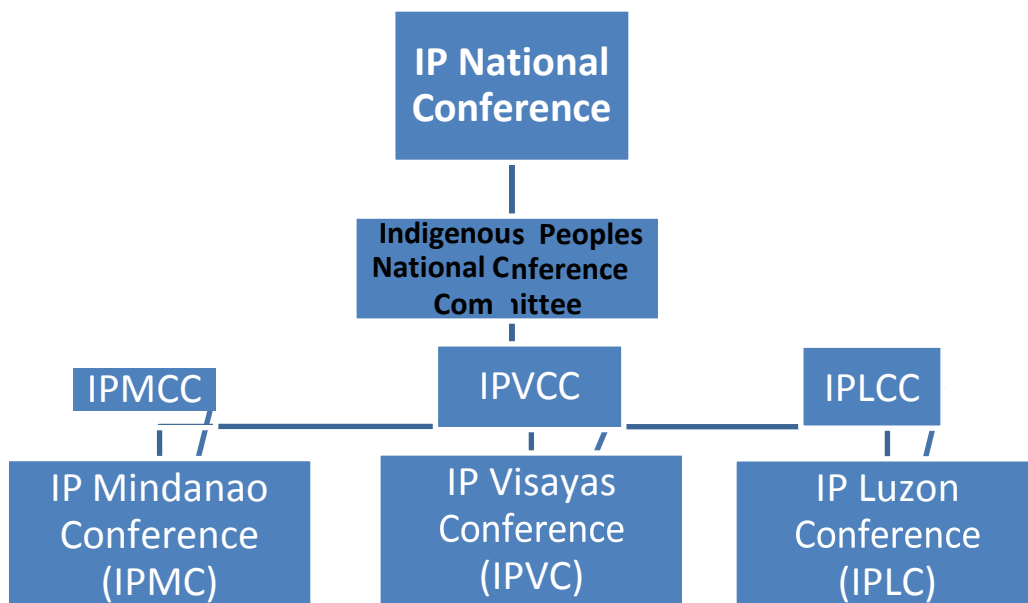
¹⁵ Chapter III, Section 3(h)

¹⁶ The data are based on the submissions of regional offices which have jurisdiction over the identified ancestral domains/lands.

4. Supports fact-finding missions (e.g. composition of quick response teams for man-made and natural disasters affecting IP communities);
5. Determines agenda on peace processes and representation in national (e.g. IPMR league creation) and international peace bodies;
6. Selection of regional representatives as lead convenors and will represent during emergency/special meetings related to IPMCC;
7. Criteria development, process/rules/protocol and obligations for IP representation in international bodies;
8. Determining Philippine IP Agenda (based on articulated data, issues, and concerns emanating from the three cluster conferences) to be presented in international bodies by authorized IP representative/s; and
9. The IP National Conference will endorse to NCIP IP representatives to international bodies.

COMPOSITION

The IP National Conference is composed of members/representatives of the three (3) cluster conferences. Each cluster conference is represented by ten (10) IP representatives per CADT which include traditional leaders, women, PWD, children, youth, and elderly.



PROCEDURES:

To have meaningful and effective IP Representation, when so required, in the various UN Bodies, the selection shall pass through the following process:

1. The concerned IP Conference (IP Luzon Conference, IP Visayas Conference, IP Mindanao Conference) shall convene to select the appropriate IP Representatives, considering the nature of representation asked for;
2. The selected IP Representative/s shall be endorsed by the IP National Conference through a Resolution to NCIP as duly mandated agency for Indigenous Peoples;
3. After selecting the Representative/s, the concerned Conference shall endorse the selected Representative to the IP National Conference;
4. The IP National Conference shall also confirm through Resolution the selected Representative and endorse the same to the NCIP;
5. After receiving the endorsement from the IP National Conference, the NCIP shall certify that the endorsed IP Representative/s has/have undergone the selection process established by the IP National Conference; and
6. The NCIP shall then submit name/s of the selected IP Representative/s to the Department of Foreign Affairs for consequent certification to the concerned UN body/ies.

CRITERIA FOR THE SELECTION OF IP REPRESENTATIVES:

1. IP Representative/s should be a CADT Rights Holder/s who is/are respected genuine community representative (leaders, elderly, women, PWD, and youth) with proven integrity and sincere commitment in working for the common good;
2. He/She has actively participated in the Cluster Conference;
3. He/She should be culture bearer with strong adherence to the customs and traditions of his/her community;
4. Endorsed by the Cluster Conference through a resolution;
5. He/She should be able to articulate the issues and concerns affecting the IPs in the whole country; and
6. He/She should be fit to travel.

UNITED STATES RESPONSE TO MARCH 8 – APRIL 8, 2016 ELECTRONIC CONSULTATION ON ENHANCED PARTICIPATION OF INDIGENOUS PEOPLES IN THE UNITED NATIONS

(a) Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective

The United States recommends initially considering new participation procedures for selected UN bodies rather than the entire UN. These could include the Permanent Forum on Indigenous Issues (PFII), Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), ECOSOC and its subsidiary bodies, and the Human Rights Council (HRC). These entities work on topics of particular importance to indigenous peoples, or topics that tend to have a greater impact on the rights of indigenous peoples. These topics include, for example, economic and social development, education, health, human rights, culture, women, youth, the environment, and conservation.

The revised procedures could build upon those that ECOSOC established for participation in the PFII. It is important to recall that representatives of indigenous peoples, including tribal governments, are not non-governmental organizations (NGOs) as that term is traditionally used in the UN. ECOSOC recognized that fact in establishing procedures for the PFII that permit the participation of indigenous institutions, communities, and other non-NGO entities. According to ECOSOC Resolution 2000/22 that established the PFII, the participation of “non-NGO” organizations of indigenous peoples was based on procedures that were used for the Working Group on Indigenous Populations (WGIP) of the Sub-Commission on the Promotion and Protection of Human Rights. Member states approved them through ECOSOC Resolution 2000/22, and they have enjoyed widespread support among indigenous peoples. The United States herein proposes certain updates to the procedures, with the aim of making them consistent with the suggestions laid out in the other sections of this U.S. response (Tab 1).

The new procedures would be aimed at enabling indigenous representatives to attend selected UN sessions; submit written input; and make oral statements in accordance with rules of procedure.

In refining the new participation procedures, we should avoid changes that would make UN sessions cumbersome, inefficient, or cost-prohibitive, including by adding unwieldy numbers of participants or cumbersome procedures to UN meetings. If the new participation procedures are found to meaningfully improve indigenous peoples' participation in selected meetings, consideration could be given to expanding them to other UN bodies and meetings.

(b) Criteria for determining the eligibility of indigenous peoples' representatives for accreditation as such

As to which indigenous entities would operate under these new procedures, the U.S. government supports enhanced participation for representatives of its federally recognized Indian tribes, which have a nation-to-nation relationship with the United States. We also favor inclusion under the new arrangements of other U.S. entities that can demonstrate that they should be allowed to participate in the UN system as indigenous peoples' representatives, as appropriate. We support applying this principle to the representatives of indigenous entities from other countries as well. We recognize that some member states have

different systems in place or may have no formal domestic process for recognition of indigenous peoples; as such, the selection procedure would need to be able to evaluate applications from entities beyond those recognized under a country's established domestic process.

(c) Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation

To determine eligibility, a hybrid committee could be created consisting of member state representatives and indigenous representatives, the respective numbers of which would need to be determined. The PFII Secretariat may be helpful in supporting the selection process. Its involvement with the PFII accreditation process, working with the UN Division of Social Policy and Development's Civil Society and Outreach Unit, gives it expertise that should prove useful in vetting applications. It would need to be determined whether the PFII Secretariat would require additional resources to assist with this function.

(d) Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative.

The application process could consist of a questionnaire requesting pertinent information from an indigenous entity. We envision more selective criteria for the new participation procedures than those currently used to determine PFII participation. The criteria would not be so broad as to accommodate those who self-identify as indigenous persons without satisfying additional factors, such as a shared history, language, or culture with a group. Questions could include:

-- What is the relationship between the indigenous representative and the indigenous people? Is the indigenous representative an elected or traditional leader of an indigenous people? Is the indigenous representative authorized by the indigenous people to speak at the UN on its behalf? Has the indigenous people established a government-to-government relationship with the central government or a sub-national government in the state? Such information would indicate whether the person has a constituency that accepts him or her as a leader.

-- What are the membership size, governance structure, and programs and activities of the indigenous people?

-- Does the indigenous people have a shared history, language, or culture?

TAB 1 – Draft Revised Participation Procedures

PARTICIPATION OF ORGANIZATIONS AND INSTITUTIONS OF INDIGENOUS PEOPLES
IN THE ~~OPEN ENDED INTER-SESSIONAL WORKING GROUP~~ [NAME OF BODY/BODIES]

Notes:

(1) By virtue of ECOSOC resolution 2000/22 which established the Permanent Forum on Indigenous Issues, the PFII is to use the participation procedures “which have been applied in the Working Group on Indigenous Populations of the Subcommission on the Promotion and Protection of Human Rights.” (The WGIP has since been discontinued.) This is a mark-up of those procedures, updated and revised as appropriate to reflect both current practice (in both the PFII and EMRIP) and the enhanced participation objective reflected in paragraph 2 below. Proposed additional text is underlined and proposed deletions are stricken through.

(2)) The phrase “organizations and institutions” of indigenous peoples is used throughout the 2012 Secretary-General report referenced in para. 2 below and in GA resolution 66/296 on the organization of the World Conference, and the term “institutions” is used in the World Conference outcome document.

1. The procedures contained in the present annex are adopted solely to authorize the participation of organizations and institutions of indigenous peoples not in consultative status with the Economic and Social Council.

2. These procedures are consistent with the procedures set forth in resolution ~~1296 (XLIV) of 23 May 1968~~ 1996/31 of 25 July 1996 of the Economic and Social Council ~~and do not constitute a precedent in any other situation.~~ They are also consistent with the conclusion in the Secretary-General’s report of 2 July 2012 (A/HRC/21/24) with respect to the further enhancement of procedures to enable indigenous peoples’ participation in all relevant work of the United Nations, as supported by resolution 69/2 of 22 September 2014 of the General Assembly setting forth the outcome of the World Conference on Indigenous Peoples. ~~They~~ These procedures shall apply only to the Working Group created by Council resolution ... and they shall remain in effect for the duration of the Working Group ~~[name of body/bodies].~~

Note: The referenced SG report is entitled “Ways and means of promoting participation at the United Nations of indigenous peoples’ representatives on issues affecting them.”

3. Organizations and institutions of indigenous peoples not in consultative status wishing to participate in the ~~Working Group~~ [name of body/bodies] may apply to the ~~Coordinator of the International Decade of the World’s Indigenous People Secretariat of the~~ [name of decision-making entity]. For the purposes of these procedures, institutions may include indigenous communities, nations and other indigenous bodies.

Note: The objective of this provision is to broaden the range of indigenous entities that, expressly, may participate in UN bodies – partly by memorializing current practice. The terms “communities and nations” come from para. 9 of the UN Declaration on the Rights of Indigenous Peoples (DRIP). The phrase “indigenous bodies” may be deemed to embrace

“representative bodies” as used in the SG Report (para. 62) and “indigenous peoples’ governance bodies...including traditional indigenous parliaments, assemblies and councils” as used in the participation proposal submitted to the Human Rights Council by the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/18/43), as cited in the SG Report (paras. 3, 4). The phrase “indigenous bodies” would also cover other terms used by indigenous participants in the PFII to describe themselves, such as “tribes” and “pueblos”.

4. ~~Such applications.~~ Applications for participation in the [name of body/bodies] must include the following information concerning the subject organization concerned or institution:

- (a) The name of the organization or institution, headquarters or seat, its location, address and contact person information for the organization or its representative(s);
- (b) A description of the organization or institution, including who it represents and its aims and purposes of the organization—(these should be in conformity with the spirit, purposes, and principles of the Charter of the United Nations);
- (c) Information on the programmes and activities of the organization or institution and the country or countries in which they are carried out or to which they apply and its governance structure;
- (d) A description of the membership of the organization or institution, indicating the total number of members and whether they have a shared history, language, or culture;
- (e) Information on whether the organization or institution has a relationship with the central government or a subnational government of a State;
- (f) Information on the selection procedure used by the organization or institution to choose its representative(s) to the [name of body/bodies], including whether a representative is an elected or traditional leader and has been authorized to speak on its behalf.

5. Upon receipt of applications, the ~~Coordinator of the International Decade~~ Secretariat of the [name of decision-making entity] ~~should~~ may consult with any State concerned pursuant to Article 71 of the Charter of the United Nations and paragraph 9 of resolution ~~1296 (XLIV)~~ 1996/31 of the Economic and Social Council. The ~~Coordinator~~ Secretariat should promptly forward all applications and information received to the ~~Council Committee on Non-Governmental Organizations~~ [name of decision-making entity] for its decision.

6. Authorization to participate in the [name of body/bodies] shall remain valid ~~for the duration of the Working Group~~ subject to the registration process and the relevant provisions of part VIII of resolution 1296 (XLIV) ~~1996/31~~ of the Economic and Social Council.

7. The activities of organizations and institutions of indigenous peoples authorized to participate in the Working Group [name of body/bodies] pursuant to these procedures shall be governed by rules 75 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council.

8. Organizations and institutions of indigenous people authorized to participate in the ~~Working Group~~ [name of body/bodies] will have the opportunity to address the ~~Working Group~~ [name of body/bodies], consistent with the relevant provisions of paragraphs ~~31-38~~ 33-40 of Council resolution ~~1296 (XLIV)~~ 1996/31, and are encouraged to organize themselves into constituencies for this purpose.

9. Organizations and institutions of indigenous people may make written presentations which, however, will not be issued as official documents.

10. States having indigenous populations should take effective measures to bring the invitation to participate and these procedures to the attention of organizations and institutions of indigenous peoples potentially interested in contributing to and participating in the ~~Working Group~~ [name of bodies/bodies].

Translated from Russian

Elleyada

Autonomous non-profit organization

Ethnocultural association

Russian Federation, the Republic of Sakha (Yakutia), Yakutsk 677008, Pereulok Vilyuiskiy 12/5;

www.elleyada-fest.ru; E-mail: elleada.fest@mail.ru; Tel 8 4112732546.

30 March 2016

President of the United Nations General Assembly

Distinguished participants,

Guided by General Assembly resolution 70/232, Elleyada, an autonomous non-profit organization and ethnocultural association, makes the following proposals to ensure the effective participation of representatives of indigenous peoples and their organizations in meetings of the relevant United Nations bodies on issues affecting them.

In accordance with the procedures and conditions for the constructive and effective participation of representatives of indigenous peoples, we propose that representatives be selected from among the delegates at the annual session of the United Nations Permanent Forum on Indigenous Issues to attend the meetings of the relevant United Nations committees. In our view, representatives of indigenous peoples should participate in the meetings of the relevant commissions on human rights, social development, crime prevention and criminal justice, sustainable development, the status of women, population and development and the commission on narcotic drugs.

Representatives should be elected in a democratic manner, through a general vote, and they could be elected for a period of one year, that is, until the following session. Prior to the session, information should be placed on the site of the United Nations Department of Economic and Social Affairs to indicate the committee meetings in which representatives of indigenous peoples can participate. The number of delegates required for participation in the meetings of the relevant bodies could be decided by an open vote. The curricula vitae of delegates wishing to be considered for the elections could be submitted in advance to the secretariat of the Permanent Forum on Indigenous Issues and made available to session participants prior to the voting.

Definition of the criteria for establishing the rights of indigenous peoples to accreditation is a rather delicate issue that requires discretion and sensitivity.

For example, the terms "indigenous peoples", "aborigines" and "natives" are not used in the legislation of the Russian Federation, but rather the terms "small indigenous peoples" and "small minorities"

There are 40 small indigenous peoples living in the Russian Federation (Russian Federation Government Order No. 536-r of 17 April 2006), and the total number of persons is about 500,000, or 0.3 per cent of the country's population. Of these peoples, 35 account for 275,000 people spread over 28 constituent entities of Russia, amounting to just 2 per cent of the total population of those regions. Thirteen of these peoples are small minorities with less

than one thousand members. The largest of the small minority groups is the Nenets (with a population of 41,000) and the smallest is the Kereks (4 persons).

At the sessions of the Permanent Forum on Indigenous Issues, the indigenous peoples of Russia are officially represented by the Russian Association of Indigenous Peoples of the North, Siberia and Far East, a community organization.

The indigenous peoples of the Russian Federation include not only the small minorities of the North and the Far East of Russia, but also other peoples whose ancestral lands are located on the territory of the Russian Federation, such as the Tatars, Bashkirs, Chechens, Ingush, Mordvins, Avars, Buryats, Yakuts, Chuvashs, Udmurty, Tuvans, Kalmyks, Altays and others. In our view, their representatives also have the right and should have the opportunity to participate in the meetings of United Nations committees and other entities concerned with indigenous issues.

The entity that draws up the criteria for accreditation of indigenous people should have the form of a commission which could, in disputed cases, take a decision by voting.

In our view, the main documents that establish that an organization represents indigenous peoples are the charter and the certificate of registration as a non-governmental organization, which indicates that the organization's activities are in the interests of indigenous peoples. This information should be updated on an annual basis to confirm that it is a legitimate organization.

Only the leaders of non-governmental organizations of indigenous peoples may apply, in person, to the commission that decides on the accreditation of representatives of indigenous peoples and the participation of their representatives in activities organized by United Nations entities.

Yours sincerely,

(Signed) M.M. Ershov

Director

Translated from Spanish

Plurinational State of Bolivia

Ministry of Foreign Affairs

Bolivia, committed to the implementation of the rights of indigenous peoples in accordance with paragraph 33 of the outcome document of the World Conference on Indigenous Peoples,

welcomes the appointment of advisers, as well as the electronic consultation process initiated on 8 March of this year.

In that context, it wishes to make the following suggestions:

1. The General Assembly should draft a resolution in which Member States commit to facilitate the participation of representatives of indigenous peoples in the various meetings of relevant United Nations bodies by covering their travel costs and daily subsistence expenses.
2. The United Nations system and the international community should cooperate with the Governments of Member States and the leaders of indigenous peoples' organizations to coordinate the funding of travel costs and daily subsistence allowances for the representatives of indigenous peoples.
3. Each Member State should initiate dialogue processes with indigenous peoples that have ancestral lands in order to establish relations, identify clear and indisputable representatives of indigenous peoples and prevent false representation by individuals, networks and non-governmental organizations.
4. In order for States to contribute to the implementation of the outcome document, the President of the General Assembly should recommend that States that have advanced dialogue processes and public policies established in accordance with international instruments on indigenous peoples should share their experiences with States that are working to establish harmonious relations with indigenous peoples.

Proposal

Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB)

The Confederación Sindical Única de Trabajadores Campesinos de Bolivia (CSUTCB) proposes the following measures to ensure the full realization of the rights of indigenous peoples within the framework of the United Nations:

- (a) Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective

One of the problems facing indigenous organizations around the world is the lack of support from Governments in their countries. We therefore propose that Governments should provide financial support for indigenous peoples to ensure their participation in the various events of the United Nations. We also request that the United Nations Development Programme (UNDP) should provide financial assistance through its various social programmes.

- (b) Criteria for determining the eligibility of indigenous peoples' representatives for accreditation

To determine the criteria for selecting representatives, we need to ascertain which organizations have been legally and legitimately established in each Member State. In addition, each organization should accredit its representatives in coordination with the Government. That step will ensure that legally established indigenous peoples are identified and will prevent individuals who do not represent indigenous peoples from attending in their personal capacity.

Sir,

Further to your request for contributions, I would like to make the following proposals:

1. The delegate should be able to demonstrate that he or she is actively involved in the indigenous organization.
2. The delegate's accreditation should be confirmed by a letter signed by the president or leader of the organization.
3. Quotas should be set in accordance with the principle of affirmative action to ensure equal conditions and equal participation.
4. There should be a system of rotation to prevent a monopoly on participation.
5. Delegates should be given a grant to cover the travel and transport costs of attending an event.

Thank you.

Efraín Sarango.
Secretary & Rapporteur

Council for the Rights of the Saraguro People

00593-997927901

E-mail sent to: ipadvisers@un.org

In response to the consultation on the participation of indigenous peoples I would like to propose the following:

- (a) All those interested in sharing aspects of their culture, including written work, music, drama and cinema, should be invited to participate in local events on their territory so that the works of art that best reflect indigenous identity and origins can be selected and exhibited at the international level for the benefit of the other members of the assembly.
- (b) With regard to the criteria for selecting representatives of indigenous peoples, representatives should not just be leaders of organizations but should also include individuals who, through their art and way of life, set an example of how to overcome our inferior situation and promote change for a better future.
- (c) I have noticed many times that individuals appointed as representatives sell their tickets and their invitation to participate to people who have nothing to contribute to sustainable development and social change, which is why I think they should have to provide evidence of the work that they do.
- (d) We indigenous peoples have much to contribute to the world of tomorrow, as you know, and it is therefore your duty and our right to be able to meet and share our music, legends, crafts and way of life.

I would like to express my sincere thanks for considering us and for accepting indigenous peoples as part of the blessed land that provides us with shelter.

Yours faithfully,

Elizabeth Chamorro Gonzáles

Av. Ferrocarril 248,
El Tambo
Huancayo
Peru

Workshop on the electronic consultation to identify the measures necessary to enable the representatives of indigenous peoples to participate in relevant meetings of United Nations bodies

At the offices of the Ministry of Foreign Affairs, at 9 a.m. on 4 April 2016, a workshop on the electronic consultation to identify the measures necessary to enable the representatives of indigenous peoples to participate in relevant meetings of United Nations bodies was held in accordance with the mandate given to the Member States of the United Nations to hold transparent consultations with the representatives of indigenous peoples. The workshop was attended by representatives of various indigenous organizations. It was organized with the support of the Salvadoran State and enabled participants to respond to each question together as a group and then discuss whether they were in agreement with the outcomes or whether any additional points needed to be incorporated. The Salvadoran State explained that the initiative had arisen on the basis of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (A/RES/69/2), in which the States Members of the United Nations committed themselves to considering, at the seventieth session of the General Assembly, ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. In addition, it was stressed that the difficulties faced by indigenous organizations in participating in those meetings should not be overlooked and, given that there is basically no participation as such, proposals should be presented to address those difficulties.

Lastly, the participating indigenous organizations agreed to make the following recommendations:

(a) Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective

On the basis of the recommendations made at the World Conference on Indigenous Peoples in 2014 and at the initiative of the national Government, a national action plan on indigenous peoples or a road map should be drawn up in response to those recommendations. Our envoy will be responsible for disseminating the plan effectively given that the plan calls for the free, prior and informed consent of our communities. Our representative will therefore disseminate the action plan.

(b) Criteria for determining the eligibility of indigenous peoples' representatives for accreditation as such

The representatives will be the individuals put forward by the indigenous organizations, and those representing the largest number of people will have an

advantage with regard to eligibility. However, the organizations will ultimately decide on their representatives.

In addition, our indigenous peoples' representatives at the United Nations should have a proven track record in working for indigenous peoples, should represent an indigenous organization or community and should be endorsed by indigenous bodies.

(c) Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation

The cultural identity of the indigenous peoples of El Salvador (Cushcatan) should be strengthened, taking into account both law and practice, so that they are eligible to act as representatives of indigenous peoples at the Permanent Forum on Indigenous Issues on a rotation basis and in accordance with the issues to be addressed.

(d) Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative

Regardless of whether it is a legal requirement, representatives should be recognized and endorsed by the organizations of indigenous peoples of El Salvador (Cushcatan) and the majority of relevant organizational bodies, and measures should be taken to ensure the participation of indigenous women and indigenous young people.

Confederación Nacional de Mujeres
Campesinas Indígenas Originarias de Bolivia
“Bartolina Sisa” CNMCIOB “BS”

Suggestions and proposals:

- (1) The Member States of the United Nations should send their representatives of indigenous peoples, with equal gender representation, to the international meetings and/or forums held at the United Nations in order to strengthen leadership and create opportunities for indigenous peoples to participate more fully in decision-making.

- (2) Member States should create a special fund with resources from States and international donations to cover the transport costs and expenses of the representatives of indigenous peoples to ensure their participation in international forums and thereby improve understanding of the concerns of indigenous peoples.

PARTICIPATION OF INDIGENOUS PEOPLES IN THE UNITED NATIONS: SPECIFIC PROPOSALS

Dear Sirs/Madams,

At the outset, we would like to refer to Article 1 of the Universal Declaration of Human Rights:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

The Bubi people of Bioko Island, whose objectives and purposes are in line with the spirit, purposes and principles of the United Nations Charter, is committed to pursuing the goals of promotion and protection of the rights of Indigenous peoples, as embodied in the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments on human rights.

Article 1 of the Declaration of the Rights of Indigenous Peoples states that, "Indigenous persons have the right, as a people or as individuals, to the full enjoyment of all human rights and fundamental freedoms recognized in the United Nations Charter, the Universal Declaration of Human Rights, and by international human rights standards."

As Indigenous peoples, we have the right to identify ourselves as such and have the right to self-determination, without which we cannot enjoy the full extent of our internationally recognized rights, such as having our own government and institutions.

OUR SPECIFIC PROPOSALS FOR EFFECTIVE PARTICIPATION:

1.- As Indigenous peoples, we shall attain our political, economic, social and cultural rights according to international standards, and in conformity with Article 1.2 and Article 73 of the United Nations Charter.

The right of all peoples to self-determination is recognized in Paragraph 1 of Article 1 of both the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Paragraphs 2 of Article 1 of both Covenants mentioned above refer to an economic implication of this right, namely the right of peoples to freely dispose of their natural wealth and resources in order to achieve their goals, without prejudice to their obligations under

international cooperation, and based on the principle of mutual benefit and respect for international law.

They also state that, "under no circumstances shall a people be deprived of their own means of subsistence."

It is important that we, as Indigenous peoples, manage our resources, lands and territories in order to attend meetings at the United Nations. We almost always live in absolute poverty due to being deprived of our lands, territories and resources, and due to structural discrimination and exclusion.

2.- Compile a list of Indigenous peoples and the States in which they are located, and receive information from Indigenous peoples themselves about their current and real living conditions.

3.- Grant Indigenous peoples Observer status at the United Nations, as we have shown over the centuries that we are peace lovers.

We should become Permanent Observers, such as the Vatican State, the Marshalls, Malta and other islands, entitled to make statements, propose topics and have our own seats.

Once granted Observer status, Indigenous peoples will commit to accepting the obligations enshrined in the United Nations Charter and be ready to fulfill those obligations. We will contribute to the smooth functioning of the Organization.

4.- Have into account documents that speak of the rights of Indigenous peoples, such as:

- The Work of the Mechanism of Experts
- The Permanent Forum
- Outcome Document
- The Report of the Special Rapporteur Erica Irene on "Permanent sovereignty of indigenous peoples over their natural resources.
- Report of the independent expert, Mr. Alfred de Zayas, on the "Promotion of a democratic and equitable international order" (A/69/272), in particular from paragraph 53 on "Non-Autonomous Peoples and Indigenous Peoples", and paragraphs 63, 72, 77, 84 and 86, as well as other international instruments.

5.- Take into account the 2030 Agenda, in particular paragraph 35, which mentions the right of all peoples to Peace and Self-Determination.

Lastly, we are grateful for our admission to, and participation in, meetings of the Expert Mechanism and the Permanent Forum. We were able to interact with other Indigenous peoples and to meet the representatives of these institutions.

Unfortunately, we have so far been unable to have conversations with representatives of the government of Equatorial Guinea, as they do not go to those meetings.

Thank you.

THE INDIGENOUS BUBI PEOPLE OF BOKO ISLAND

Translated from Russian

Comments of the Russian Federation on ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them

The Russian Federation has always supported and will continue to support indigenous peoples in their aspiration to achieve fuller and more effective enjoyment of their rights, including their involvement in the consideration of issues affecting them.

There are currently at least two forums in the United Nations system that are open for direct participation by indigenous peoples' representatives: the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council and the Permanent Forum on Indigenous Issues.

Indigenous peoples' representatives may also, on an equal footing with other representatives of civil society, attend meetings of various bodies in the United Nations system that discuss, inter alia, issues affecting indigenous peoples (including the Social Forum and the Forum on Minority Issues of the Human Rights Council and the Commission on the Status of Women), in accordance with their rules of procedure. Furthermore, a special procedure of the Human Rights Council has been established to deal with this topic: the Special Rapporteur on the rights of indigenous peoples, who, as part of his or her mandate, interacts directly with indigenous peoples' representatives on current issues affecting their lives and the enjoyment of their rights.

Some organizations in the United Nations system have developed special procedures for involving indigenous peoples in the discussion of relevant thematic issues. For example, indigenous peoples' organizations participate in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization, and also in meetings of the Conference of the Parties to the Convention on Biological Diversity. Indigenous peoples' representatives, together with other non-State entities, have the opportunity to interact with the human rights treaty bodies, and specifically to submit their alternative reports on the implementation by States of the relevant international treaties.

Thus indigenous peoples currently have a broad range of opportunities within the United Nations system for full involvement in the discussion of issues affecting them. Through the aforementioned mechanisms, indigenous peoples may bring their concerns before other bodies of the United Nations system and submit information to them for consideration without undermining the existing rules of procedure and the inter-State nature of the Organization's work as a whole.

It should now be possible to focus efforts on additional measures for keeping indigenous peoples informed about the opportunities available to them for interaction with the United Nations, including through information and communications technology.

In addition, clearer and more transparent criteria should be devised for the accreditation of indigenous peoples for the meetings of the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council and the Permanent Forum on Indigenous Issues. The current system is closed and subjective in nature and is not easy for States or indigenous peoples themselves to understand. In practice, the issue is subject to the discretion of a narrow circle of staff members of the United Nations Secretariat.

May 5, 2015
Special Rapporteurs Victoria Tauli
Corpuz and James Anaya for the PFII
and the UN General Assembly
Montreal, North America

Consultation of Indigenous Peoples before the PFII and the UN General Assembly

The problem of Access to Justice for the Pahana is at present also the required solution in and of itself. That such a state of affairs can exist at all in such a free nation proud of its heritage as the United States is contradicted by those who would take advantage of the responsibility of government and the laws without a true understanding of the responsibilities or the implications or indeed of the nature of law itself. Yet such is the state of affairs effecting us all, Pahana, all our relations in the United States and in America at home and abroad in High level intergovernmental relations neglected, not by the Founding Fathers of the United States but by those who would follow them without the knowledge of or experience with government and the law.

Effecting Internal Displacement both within and outside of our home in the Continental U.S. like other Indigenous peoples Economic Development has taken a back seat to the survival of our Identity as a people, threatening even our very existence as well. Persecution knows no boundaries however and does not stop here for us or our neighboring States. Suffering and persecution change in the face of war and peace while others continue outside of the law and toward other ends, and as the Special Rapporteurs and Experts in the PFII bear witness these problems become compounded for us at home and in High Level Intergovernmental Affairs and Security, as well as in International Diplomacy between ourselves and among other Nations and States.

And while these problems cry out in demand of Representation before the Court as well as Representation within the PFII by the Special Rapporteurs and Experts they call for Representation to be met within and by the member States themselves of which we are a part, though whether or not we are a part, as our particular relationship with the United States bears witness to the unique International character of our relations, all the while unmet, and unaddressed and specifically at this time still unrecognized these problems become compounded in many situations also a crime in and of itself, where many millions have lost their lives in the Great and Second World War as well as in other conflicts.

Our Ancestors recognized the leadership of great men and we have them to guide us where we have the will. Both our ancestors and the Founding Fathers of the United States. While General Washington was confronted with Statesmen inexperienced beyond their limits he acted in a coherent, fair and just manner with and in regard to the Indigenous peoples of the United States. Even President Roosevelt while overwhelmed in both war and peace did the groundwork of loving his neighbor and reversed the deplorable and inhumane treatment of Indigenous as well as Immigrant Americans. But here and now what is important and what must be addressed is our Representation.

Our Representation before the Court, before the PFII, the General Assembly and last though most certainly not least both our Recognition and Representation by and with the United States and those member States who constitute our neighbors and where in many circumstances and situations we share the same very nature, and law.

I would like to see representation both expand and improve to the point where we may see and define our reciprocation in a trilateral relationship collaboration with the PFII, where the PFII may do so with and in a much needed and greatly improved relationship with the General Assembly, and of course where we may surpass our needs of and with the PFII in direct consultation and reporting with neighboring member States that in many situations we are an integral part of.

On this point though, it must be added that the Secretary General is working very hard to improve the effectiveness of the Security Counsel before, during and following events which must be brought to it's attention, and that we must likewise aim high at the level of participation, integration, collaboration and consultation with Indigenous Peoples, the PFII and Member States of the General Assembly, and reciprocate with each other in an environment where a handshake and where civilized culture may coexist and even flourish.

I would also like to take this opportunity to thank Special Rapporteur Victoria Tauli-Corpuz and James Anaya and Mr. Secretary General Ban Ki Moon for their great effort and sometimes seemingly tireless labor in effecting these changes in this work and the function of the PFII, the General Assembly and the Security Counsel. Consultations led by the President of the United Nations General Assembly on the Security Counsel.

Alden C. Sheremata,
Pahana of the Hopi, Pahana and Sioux peoples of the United States.

Consultations led by the President of the United Nations General Assembly on the "possible measures necessary to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them" (follow-up to UNGA Resolution 70/232).
Contribution of France (April 2016)

Overview of France's approach to issues relating to indigenous populations

France is fully committed to the promotion and defence of the human rights of all individuals. Accordingly, persons belonging to indigenous populations must be able to enjoy the same rights and freedoms as any other individuals, without discrimination of any kind, in full compliance with the principles of the equality and universality of human rights.

Referring to the interpretative declaration it made when the United Nations Declaration on the Rights of Indigenous Peoples was adopted in 2007, France reiterates that, in accordance with the constitutional principles of the indivisibility of the Republic and the unity of the French people, France does not recognise collective rights for any group defined as a community of origin, culture, language or belief.

At the national level, France has adopted policies in favour of the indigenous populations living in its overseas territories, in compliance with the constitutional principle of the equality of citizens. That principle and its corollary, the indivisibility of the Republic, prohibit the establishment of a legal regime that distinguishes between citizens and that would create different categories of persons with different rights. For the implementation of the 2007 Declaration, France therefore favours the adoption of specific measures defined on a territorial basis.

France remains committed, at the national and international levels, to ensuring respect for the rights and freedoms of persons belonging to indigenous populations, as of all individuals, without discrimination of any kind.

General principles for the consultations led by the President of the General Assembly and the representation of civil society at the United Nations

It is within the framework of that approach that France is contributing, through this document, to the consultations led by the President of the United Nations General Assembly (UNGA) on the "possible measures necessary to enable the participation of indigenous people's representatives and institutions in meetings of relevant United Nations bodies on issues affecting them" in follow-up to UNGA Resolution 70/232.

France would like to thank the President of the General Assembly, and the advisors he has designated, for the consultation modalities they have implemented. In particular, France appreciates the willingness to create a transparent and inclusive process, and emphasises how important it is for the consultations to lead to proposals that are likely to achieve consensus among the United Nations member states.

France thinks it is useful to have this discussion on strengthening the participation of indigenous persons and organisations in the United Nations on issues that affect them.

The procedure will nevertheless need to be fully compliant with the Charter of the United Nations, in particular with the rules applicable to civil society organisations' association. The participation of indigenous populations' representatives and institutions in meetings of the United Nations is by nature consultative.

France recalls that within this institutional framework, **measures have been taken to enable representatives of civil society to contribute to the work of the United Nations**. France has encouraged these initiatives because it fully recognises the positive contribution that civil society can make, which complements the action of states, and it supports opportunities for its representatives to participate.

The **mechanism for the accreditation of non-governmental organisations via the Economic and Social Council** is the established rule for all organisations representing the interests of civil society and non-state entities, with a view to their participation in the proceedings of the United Nations. To date, this mechanism has enabled the accreditation of more than 4,000 NGOs, including many indigenous organisations.

Preliminaries

As part of the discussion in progress, one **preliminary should be the elaboration of an internationally recognised definition of indigenous populations**, based on precise, indisputable criteria. The concept of self-definition or self-identification cannot be sufficient because any group could demand to benefit from the rights contained in the 2007 United Nations Declaration.

The lack of an agreed definition of indigenous populations was precisely raised by the Secretary-General in his report of July 2012 (A/HRC/21/24, paragraph 62). In the report, the Secretary-General also pointed out that the issue of the participation of indigenous persons and organisations in the United Nations system raises a number of important issues, notably the principles that should be used to determine which indigenous populations are recognised and which organisations claiming to represent them are recognised as representative.

It also seems necessary, in order to inform the discussions in progress, to **conduct a thorough preliminary inventory of the measures that have already been taken to facilitate the participation of indigenous representatives and organisations**, which include:

- the creation of dedicated mechanisms (Permanent Forum, Expert Mechanism and Special Rapporteur);
- the identification of indigenous populations as one of the nine "Major Groups" for the United Nations activities related to sustainable development, with the representation that it implies for each body concerned;
- the establishment of ad hoc mechanisms for some forums – see the examples in the Secretary-General's report of July 2012 (A/HRC/21/24, paragraph 55: the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore at the World Intellectual Property Organization (WIPO), and the Conference of the Parties to the Convention on Biological Diversity (CBD)).

Any approach will only be effective if it relies on established "best practices" on the participation of indigenous populations' representatives and institutions in the United Nations system.

The few examples above demonstrate the extent to which the United Nations takes the contributions of indigenous persons and organisations into consideration.

France also stresses that the mechanisms for the involvement of indigenous persons and organisations at the *World Conference on Indigenous Peoples* in September 2014, which also represented a "best practice", referred to the examination by the member states of the information supplied by the representatives of indigenous organisations for accreditation (A/RES/66/296, OP3(h)).

Another important aspect to take into account in this discussion is the need **to identify what are the "meetings of relevant United Nations bodies on issues affecting them"**.

France remains fully committed to participating actively in these consultations and in all the processes aimed at improving respect for the rights of persons who belong to indigenous populations./.

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Enabling the Participation of Indigenous Governing Institutions at the United Nations

Supplemental submission to inform the second draft compilation of views as called for in

A/RES/70/232

by the Indian Law Resource Center and the Citizen Potawatomi Nation

May 13, 2016

This submission is made to supplement our original submission of April 8, 2016. We hope this will contribute to the compilation of views and to the consultation to be held May 18, 2016.

1. Don't change the system for indigenous participation beyond what is required to permit indigenous governments to participate in UN meetings.

Some written submissions and some comments by participants in the consultation held on May 11, 2016 seemed to suggest that the entire system by which all indigenous groups participate in United Nations meetings should be changed. Such a total reworking of the entire system was not called for by the World Conference Outcome Document, and it would be a very complex task. The only serious problem with the system has been the inability of indigenous governments or governing institutions to be accredited for participation except in very limited situations. This is the problem that the Outcome Document sought to address and which this consultation process should address.

In general, the system for permitting the participation of indigenous groups has worked quite well for many years, except for indigenous governments. Very few complaints or problems have been raised about the system for other indigenous groups and indigenous NGOs.

Indigenous groups are able to participate as indigenous peoples' organizations in the work of the Expert Mechanism and the Permanent Forum. Indigenous non-governmental organizations in consultative status with ECOSOC can participate also in the work of ECOSOC, the Human Rights Council, and other subsidiary bodies. Attempting to change this existing system as a whole will risk disrupting a system that is working well apart from the problem for indigenous governments.

2. Indigenous governments should be accredited if they demonstrate that: (1) they represent a people; (2) the people is indigenous; and (3) the government is duly established by the people.

We would like to propose that three factual elements should be the fundamental requirements for accreditation as an indigenous government. The first requirement is that the government represent a people, that is, a people distinct from others and having bonds of history, language, culture, ethnicity, location, self-government, or other social or political bonds. Secondly, the people must be shown to be indigenous, as that term is used in practice in the United Nations and in other international bodies. No particular, technical definition should be required, but the people must be indigenous according to some definition and as the term is used in the United Nations. This is a question of fact and history, and it cannot be determined by self-identification alone. The third requirement is that the government be duly established by the indigenous people that it purports to represent. Naturally, such a government must be responsible to the people and democratic in nature. No particular form of government should be required. Naturally, additional, detailed information about the identity, location, and nature of the government should also be required.

A government that meets these requirements and other related requirements should be accredited to participate permanently, subject to periodic reporting on a reasonable basis. Such a government would then designate the individual or individuals to represent it in particular UN meetings.



Center for World Indigenous Studies

PMB 214, 1001 Cooper PT RD SW 140
Olympia, Washington 98502 USA

8 May 2016

**In Reference to the compilation of “possible measures
necessary to enable participation of indigenous peoples” in the
United Nations: “Draft ONE” 27 April 2016.**

The Center for World Indigenous Studies (CWIS) is an indigenous peoples’ governed institution founded by the Conference of Tribal Governments in 1979 in Tumwater, Washington USA committed to advancing traditional knowledge through research, education and public policy development. CWIS serves indigenous governments and organizations worldwide and provides guidance to states’ governments and multi-lateral organizations as well as the academic and professional communities when asked to do so. CWIS has played an active role in the development of language and studies in support of indigenous peoples concerned with climate change, intellectual property rights, bio-diversity, education, economic and social change, strategic and geopolitical relations as well as establishment of constructive relations between indigenous nations and nations and states. Our organization has actively participated in UN forums the UN Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, EMRIP, UN Declaration on the Rights of Indigenous Peoples, Convention on Biodiversity, Intellectual Property Organization, and the World Conference on Indigenous Peoples including the Outcome Document throughout the years.

We note our 29 March 2016 electronic consultation submission presented under A/RES/70.232 as containing a detailed discussion of the complexities of creating a mechanism that permits representation of more than 5000 indigenous nations created by an estimated 1.3 billion people ranging in size from 15 individuals to more than 20 million people. We offer specific procedural recommendations in this submission addressing procedures, modalities, criteria and a credentialing body.

We discuss relevant matters under each of the four questions raised by the General Assembly President and the four advisers (Mr. Kai Sauer, Permanent Representative of Finland, Mrs. Martha Ama Akyaa Pobee, Permanent Representative of Ghana, Dr. Claire Charters from the Pacific region and Dr. James Anaya from the North American region).

We offer the following specific recommendations in reply to the 27 April 2016 Compilation of Views necessary to enable the participation of indigenous peoples' representatives and institutions in relevant United Nations meetings on issues affecting

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them, and of good practices with the United Nations regarding indigenous peoples' participation.

- Procedures that will make the participation of Indigenous peoples' representatives meaningful and effective.
 1. Indigenous Nations formed under constitutional and/or customary law of any population size, economic capacity or territorial extent must be recognized to participate in United Nation decisions affecting their rights and/or interests.
 2. Indigenous Nations must be self-identifying and recognized by neighboring nations (at least two) and organized as an equal nation (autonomous, or independent), sub-ordinate nation (associated by family, integrated, totem (clan, nindooemag, etc.), confederated.
 3. The procedures must provide for tangible evidence of national identity (see item 2 above), the form of credentials required to represent that nation to the UN and the individual(s) delegated to represent the nation must present evidence of delegation (which may be in the form of a symbolic article (that has been first been presented to identity the nation).
 4. And in the absence of a previously recognized national registration an individual already recognized as a delegate from a registered nation may witness on behalf of the petitioner representative or a written document stating that the individual (name) shall represent the nation (name and location) during the specific proceedings.
 5. Recognition of a petitioning nation must precede recognition of an individual presenting credentials on behalf of that nation.
 6. Recognition by a UN member state or states(s) may be taken into consideration as part of the procedures as demonstrated by a written "statement of recognition," however; such a statement of recognition should be determinative.
 7. Fourth World nation observer status should remain permanent unless withdrawn by the nation itself or due to a nation's flagrant disregard of United Nations protocols.
- Criteria for determining the eligibility of Indigenous peoples' representatives for accreditation as such;
 1. An individual presenting credentials provided by a previously recognized nation (item 2 and item 3 above) may present evidence of authorization in the form established by the indigenous nations registered with the UN (see item 3 and 4 above).
 2. After formal acceptance of credentials offered by the nation and its representative the UN should then issue a declaration recognizing the credentials in written form, presented to the representative and filed with the appropriate agency.
- Nature and membership of the body to determine the eligibility of Indigenous peoples' representatives for accreditation;

1. A credentials body appointed by the UN General Assembly President including 19 members (indigenous expert from each of the seven regions, states' experts from each of the seven regions and five at large experts not representing states or indigenous peoples (constituted from the UN Council on Human Rights perhaps) should receive petitions from indigenous nations governments identifying the form of credential a representative will have to signify a nation's authorization of representation.
2. Eligibility to serve as a representative must be determined by the credentials body by receiving and examining the nation-specific credential (which may be in the form of

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a symbolic article (that has been first been presented to identity the nation) or in the form of a written letter from the national decision making body or authorized head of the nation.

3. This credentials body should be considered as a different representative body proposed in our 29 March 2016 submission.

- Details of the process, including the information required to be submitted to obtain accreditation as an Indigenous peoples' representative;
 1. A nation's delegate seeking to present credentials should do so by submitting the previously recognized symbolic article (or written letter describing the credentials of the representative) issued by the nation determined to have observer status.
 2. If a nation has not previously established its observer status an individual seeking to present credentials must present a nation's symbolic or written letter as instruments of national identification that can be or has been vouched for by a neighboring nation.
 3. When a nation has established its observer status (by the credentials body), the individual seeking to represent that nation may then submit the symbolic article and/or letter to the credentials body seeking formal recognition as the delegate(s) of the specific nation.

This submission should be read in consideration of our 29 March 2016 submission to the UN General Assembly President and his advisors.

Yours sincerely,



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中华人民共和国常驻联合国代表团

PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE UNITED NATIONS

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CMS (2016) 93

The Permanent Mission of the People's Republic of China to the United Nations presents its compliments to the Office of the President of the United Nations General Assembly and has the honor to transmit herewith China's initial input regarding the participation of Indigenous Peoples in the United Nations meetings.

The Permanent Mission of the People's Republic of China to the United Nations avails itself of this opportunity to renew to the Office of the President of the United Nations General Assembly the assurances of its highest consideration.

New York, 4 May 2016



Office of the President of the
United Nations General Assembly

中国关于扩大土著人参与联合国事务问题的初步立场

- 1、中方欢迎土著人代表和机构参加与土著人利益相关的联合国事务，使联合国有关机制能更好地反映土著人利益和诉求。
- 2、关于扩大土著人参与联合国事务的磋商进程应由联合国会员国主导，维护有关磋商进程的政府间性质。
- 3、土著人代表和机构是非国家行为体，其参与联合国事务应有章可循，如应坚持“会员国无异议原则”等现有规则。
- 4、目前各方对土著人定义、认定土著人代表或机构的标准以及扩大土著人参与联合国事务的概念、范围、具体方式等诸多问题尚存不同看法。有关磋商进程应充分听取各方意见，循序渐进，以协商一致方式达成可为各方普遍接受的方案。应避免在各方还没有共识的情况下仓促行事，或预判磋商结果。
- 5、作为磋商首要步骤，各方应先就土著人定义或确定土著人代表和机构认定标准问题进行讨论。
- 6、中方将积极配合联大主席任命的顾问组工作，与各方保持沟通，为推动扩大土著人参与联合国事务磋商进程发挥积极作用。

unofficial translation

China's initial input regarding the participation of Indigenous Peoples in the United Nations meetings

- 1, China welcomes the participation of indigenous peoples' representatives and institutions in the United Nations meetings affecting their interests, so that the relevant United Nations mechanisms could better reflect the interests and aspirations of indigenous peoples.
- 2, The consultation process on promoting the participation of indigenous peoples in the United Nations meetings shall be led by Member States, and intergovernmental consultation process should be maintained.
- 3, As indigenous representatives and organizations are non-state actors, their participation in the UN meetings should be in line with the existing rules of procedure such as consideration by Member States on "non-objection basis" and so on.
- 4, There are currently divergent views on the definition of indigenous peoples, criteria for determining the eligibility of indigenous representatives or institutions, as well as the concept, scope and specific ways on promoting the participation of indigenous peoples in the United Nations meetings. Opinions from all sides should be fully consulted during the process, and the finalized text should be achieved step by step and by consensus, and be generally acceptable to all relevant parties. Either hasty action in absence of consensus or prejudging on the result of the consultation should be avoided.
- 5, As the first step for consultation, all sides should, first and foremost, discuss the issues on definition of indigenous peoples or criteria for determining the eligibility of indigenous peoples' representatives or institutions.
- 6, China will actively work with the 4 advisers appointed by the President of the General Assembly, listen to ideas from all parties and play an active role in promoting the participation of indigenous peoples in the United Nations meetings.

Submission by the Tulalip Tribes of Washington to the United Nations Consultation on the Participation of Indigenous Peoples at the United Nations
May 10, 2016

The Tulalip Tribes of Washington is a federally recognized Indian Tribe under the Treaty of Point Elliott, signed in 1855, residing in Washington State in the United States. As a treaty tribe, the Tulalip Tribes have recognized inherent sovereign rights to be the legal representative authority for the descendants of the Snohomish, Snoqualmie, Skykomish, and other allied tribes who signed the Treaty of Point Elliott living on the reservation currently known as the Tulalip Reservation.

The Tribes have participated in negotiations and deliberations in bodies of the United Nations for over 20 years, including the Convention on Biological Diversity, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, the Intergovernmental Panel on Biodiversity and Ecosystem Services, and the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization.

We would like to draw attention particularly to para 31 of the Outcome document of the High-level Meeting of the General Assembly: The World Conference on Indigenous Peoples on the development of a system-wide action plan for achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the need for increasing the coherence of activities throughout the United Nations system. Mechanisms and procedures need to be adopted that ensure the incorporation of the articles of UNDRIP in all organs of the United Nations System, including past, current and future negotiating and treaty bodies, beyond the General Assembly.

As we are submitting late in the process, we will be brief and our comments, and reserve more detailed comments to a submission in the next round. We will also limit repeating positions already well stated, and focus on important issues that have been less well treated.

Accreditation

1. We generally support submissions made by the Arctic Indigenous Peoples organizations and the Indian Law Resource Center. We believe it is necessary to establish a new category of representation that encompasses the designated representative authorities of indigenous governing institutions.
2. Indigenous governing institutions must be treated distinctly from indigenous civil society, such as indigenous nongovernmental organizations (INGOs) and indigenous social organizations (ISOs).
3. We support continuing existing mechanisms for the participation of indigenous civil society, but believe that this participation should be separated from final decision-making. We believe that this distinction naturally follows from a legal understanding of the status of governing bodies of self-determined peoples.
4. We do not yet have an opinion on indigenous representative political organizations. We acknowledge the wide diversity of indigenous organization around the world, and the differing existing recognized legal status of Indigenous Peoples within their nation states. Some countries do not recognize the existence of Indigenous Peoples and have claimed constitutional barriers to such recognition. In other cases, Indigenous Peoples themselves have created representative political organizations to represent their rights and interests. Any accreditation mechanism should be flexible enough to accommodate such representative political organizations provided that there is evidence that there has been a transparent and accountable process that has delegated representative authority by indigenous governing institutions. Care should be taken to ensure that specific authority has been granted for either general representation, or representation for a specific United Nations process, deliberation or negotiation. This could take the form, for example, of a resolution that clearly and unambiguously delegates authority in a specific way.
5. Existing accreditation with the United Nations Economic and Social Council (ECOSOC) is not sufficient to establish membership in a new category. The criteria for ECOSOC accreditation have been designed for the participation of experts, not authoritative representatives of indigenous governing institutions. This new category should require new submissions for membership and recognition of status.

6. The United Nations system must adopt criteria and due diligence procedures, and a mechanism for disaccreditation and dispute resolution. In our experience a number of United Nations bodies that currently accredit observers do not have substantial criteria or due diligence procedures to ensure that participants are from valid representative organizations. It is critical for the development of trust in this new category that members truly carry representative authority.
7. Accreditation should be for specific governing organizations. Individual representatives should be required to demonstrate the delegation of authority for any meeting in which they participate. The mechanism could be flexible, and allow indigenous authorities to designate a period of representation, designate standing representation until rescinded, or require representation for each meeting. It could be up to each indigenous representative authority to designate how this should occur. In any case, individuals should not have standing authority without clear unambiguous designation.
8. Accreditation should show deference to existing state-recognized governing bodies. The Tulalip Tribes agrees that the mechanism should not be limited to state-recognized indigenous governing bodies. Where such bodies exist, and have their self-governance and self-determination recognized through constitutions, treaties, agreements or other constructive arrangements, these bodies have priority membership. The United Nations should avoid getting involved in internal national disputes over legitimate representative authority.

Meeting Procedures

1. We recognize that floor time during meetings of a specific duration presents challenges to full and effective indigenous participation of indigenous governing institutions and indigenous civil society.
2. We also observe that it is a burden on Indigenous Peoples that is not placed on states to come up with a single position or limit interventions to a single voice. The principle of self-determination means that there may exist valid diversity of views from indigenous governing institutions, regional groups or other groupings. Meetings should allow for interventions through all these ways of organizing input. Existing good practices include disciplined interventions by indigenous observers, and the good governance of meetings by chairs who enforce rules of procedure equitably on all parties. Good chairs can make significant space available for interventions by limiting long and rambling discussions, providing fair opportunity for all views to be expressed.
3. On issues that directly impinge upon Indigenous Peoples' rights and interests, interventions should be interspersed with the comments of member states or parties. Indigenous peoples' representatives should be allowed equal time to state their positions. This manner of participation has been adopted as good practice in some parts of the negotiations related to Article 8J of the Convention on Biological Diversity and the WIPO IGC. However, this has not been adopted throughout the processes as Indigenous Peoples are more often relegated to the end of the last round of interventions by members or parties. This in effect means that their issues and views are not fully discussed.
4. Currently in United Nations processes engaged in text-based negotiations, the rule is applied that Indigenous Peoples must be supported by members or parties for their texts to remain in negotiation text. On issues directly related to Indigenous Peoples' rights and interests, and on decisions that involve their right to free, prior and informed consent, text submitted by designated representative authorities of indigenous governing institutions should remain and until changed or removed by their consent.

Intercessional Procedures

1. The mechanism should not be viewed as applying only to official meetings of UN bodies. For it to be effective, the mechanism must address intercessional activities involving preparation for meetings and effective input from indigenous governing institutions.
2. Input from indigenous governing institutions should be made generally available as information documents, incorporated into discussion papers, and used by United Nations agencies and secretariats of the various treaty bodies and other organs as the basis for developing options, recommendations and draft decisions.
3. United Nations bodies, in cooperation with members and parties to conventions and agreements must cooperate to ensure that national and regional processes occur at a level that allows for full and effective participation and preparation for meetings and negotiations.

Indigenous Peoples and Local Communities

1. There is a history in the United Nations of the use of the phrase “indigenous and local communities.” Following UNDRIP, many United Nations bodies and some instruments have adopted using the phrase “indigenous peoples and local communities.”
2. While this constitutes a significant step forward, it still leaves unresolved many issues related to past, current and future processes and negotiations.
3. Everybody has rights as expressed in the Charter of the United Nations, that must be respected. UNDRIP, however, expresses how these rights must be recognized and respected for indigenous peoples who are self-governing and possessing the right of self-determination. Indigenous peoples hold a degree of autonomy and affiliation with their own ways of being and forms of customary law and governance institutions that are not necessarily possessed by local communities.
4. The lack of recognition by some states of the status of indigenous peoples as peoples in United Nations negotiations has caused and is causing violations under the principles of UNDRIP. One significant impediment to negotiations at the WIPO IGC, for example, has been the failure to separate principles that apply to indigenous peoples and local communities. Principles that apply to civil society may not apply to self-governing peoples with the right of self-determination, and is fundamental to the implementation of the concept of free, prior and informed consent. Balancing tests that are commonly applied to stakeholders of equal standing by national governments, are not appropriate when applied to communities that have collective rights to self-determination. Balancing tests are also not appropriate to human rights.
5. With the recognition indigenous peoples as a distinct subject of national law, there should be a review of past and present treaties to address where they impinge on the rights and interests of indigenous peoples. The United Nations should invest in treaty and negotiation revisions that take into account these rights and interests.

The Tulalip Tribes will submit further comments on the next draft of the discussion document.