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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by the Ewiiapaayp Band of Kumeyaay Indians, National Congress of American Indians, Native American Rights Fund, non-governmental organizations in special consultative status, Indian Law Resource Centre, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 August 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Measures to Combat Gaps in the Implementation of the UN Declaration on the Rights of Indigenous Peoples*

The Office of the High Commissioner for Human Rights recently reported on its “efforts to translate the promise of the United Nations Declaration on the Rights of Indigenous Peoples into reality,” noting that, in spite of the adoption of the Declaration ten years ago, considerable challenges remain, including an overall lack of recognition and protection for Indigenous land rights.¹ The most significant actions the Human Rights Council can take to address the implementation gap are to encourage the monitoring of states’ compliance with the Declaration and to enable Indigenous governance institutions to participate directly at the Council.

Establishing a responsive and effective implementing body for the UN Declaration on the Rights of Indigenous Peoples

For years, Indigenous leaders have urgently called for measures to implement the Declaration and to respond to violations of their rights. The Declaration itself provides that the UN and member states “shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”² In 2014, the General Assembly invited the Council to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to “more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve achievement of the ends of the Declaration.”³ In 2016, the Council amended the mandate of the Mechanism, significantly increasing its independence and capacity to be an effective implementing and monitoring body for the Declaration, including by granting it authority to “seek and receive information from all relevant sources as necessary to fulfil its mandate.”⁴ Now the Mechanism has the tools and authority to be proactive, ask questions and seek answers, evaluate information and share findings broadly – with Indigenous Peoples and member states, with the UN and with the public.

Importantly, the Mechanism can now assist states with implementation of recommendations made at the Universal Periodic Review, by treaty bodies, or by other relevant mechanisms. While member states must request assistance, the OHCHR, the Council, and the Mechanism should take steps to publicize its mandate and encourage states to make use of this function.

The Mechanism should issue press releases to draw attention to urgent human rights situations, and should also coordinate closely with others, especially the Special Rapporteur on the rights of Indigenous Peoples, which has a complementary mandate. For example, with seven members, the Mechanism has significant capacity to gather and analyze information and share it with the Special Rapporteur. The Special Rapporteur can then make and disseminate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of Indigenous Peoples.

Coordinated efforts are increasingly important. 2015 was the deadliest year yet for environmental activists; almost 40 percent of 185 killed were Indigenous.⁵ The Inter-American Commission on Human Rights reported that in the first month of 2017 alone, 14 human rights defenders were murdered, many of whom were Indigenous.⁶ Indigenous human rights defenders working to safeguard their land, resources, and rights must be protected, yet lack of human rights protections, the failure to monitor rights violations, and gaps in the implementation of instruments like the

¹ A/HRC/36/22, Report of the United Nations High Commissioner for Human Rights, *Rights of Indigenous Peoples*, ¶ 9 (July 6, 2017).

² G.A. Res. 61/295, ¶ 42 (Sept. 13, 2007).

³ G.A. Res. 69/2, ¶ 28 (Sept. 25, 2014).

⁴ A/HRC/RES/33/25, ¶ 9 (Oct. 5, 2016).

⁵ Global Witness, *On Dangerous Ground: 2015’s Deadly Environment: The Killing and Criminalization of Land and Environmental Defenders Worldwide* (June 20, 2015), available for download at: <https://www.globalwitness.org/en/reports/dangerous-ground/>

⁶ Press Release, Inter-American Commission on Human Rights, *IACHR Condemns Murders of Human Rights Defenders in the Region* (Feb. 7, 2017), available at: http://www.oas.org/en/iachr/media_center/preleases/2017/011.asp

Declaration put their lives at risk. The Special Rapporteur is overwhelmed with thousands of cases each year, many of which are life-threatening and require an immediate response. Thoughtful coordination and information sharing between the Mechanism and the Special Rapporteur, along with other special procedures of the Council, will dramatically improve response rates and advance implementation and monitoring of the Declaration and other relevant human rights instruments.

The grave situations Indigenous Peoples face demand that the Mechanism take the terms of its mandate and translate them into institutional practices and procedures that will improve the lives of Indigenous Peoples and advance the objectives of the Declaration. We urge the Council to encourage members to listen carefully, to act vigorously, and to speak out fearlessly on behalf of Indigenous Peoples around the world.

Enabling the participation of Indigenous governance institutions at the Council

The Council and other UN bodies recognize that existing rules do not permit the participation of Indigenous governance institutions in UN meetings that impact their interests unless they are able to acquire consultative status as non-governmental organizations, which is plainly inappropriate for governance institutions.⁷ The Declaration guarantees the right of Indigenous Peoples to “participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures.”⁸ To address this gap in implementation, member states have committed to consider “ways to enable the participation of Indigenous Peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.”⁹ Yet, despite multiple rounds of consultations between Indigenous Peoples, member states, and UN bodies, and months of intergovernmental negotiations, member states have failed to reach consensus on the details of participation. Though final action has not yet been taken, it is now expected that the General Assembly will simply schedule more consultations and delay a substantive decision until its 75th Session.

However, language in the current draft resolution “Encourages further efforts to facilitate the participation of Indigenous Peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them in accordance with their respective existing rules of procedure...”¹⁰ The Council routinely addresses the rights of Indigenous Peoples through its special procedures, treaty monitoring bodies, and its regular sessions which include, *inter alia*, adoption of an annual resolution on the rights of Indigenous Peoples and interactive dialogues with the Indigenous mechanisms. It is critical that the voices of Indigenous governance institutions are heard directly in discussions addressing and impacting their rights. Unlike civil society, Indigenous Peoples “have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions” including their decision-making institutions, as guaranteed by the Declaration.¹¹ To realize this right, Indigenous governance institutions should have a permanent place to participate at the Council.

We urge the Council to ensure that Indigenous governance institutions are able to participate fully in its sessions in ways appropriate to their status. Enabling such 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,¹² it will yield significant benefits to the

⁷ See A/HRC/21/24, Ways and means of promoting participation at the United Nations of Indigenous Peoples’ representatives on issues affecting them, Report of the Secretary-General (July 2, 2012); A/HRC/18/42, Final report of the study on Indigenous Peoples and the right to participate in decision-making, Report of the Expert Mechanism on the Rights of Indigenous Peoples, ¶ 36 (Aug. 17, 2011); A/HRC/18/43, Report of the EMRIP on its Fourth Session (Geneva, 11-15 July 2011) (Aug. 19, 2011); and A/67/454, Report of the Third Committee (Dec. 3, 2012), ¶ 11.

⁸ G.A. Res. 61/295, ¶ 18 (Sept. 13, 2007).

⁹ G.A. Res. 69/2, ¶ 33 (Sept. 25, 2014).

¹⁰ See Draft Resolution on Enhancing the participation of Indigenous Peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them (Aug. 15, 2017), *available at*: <http://www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/Final-draft-resolution-Enhancing-the-participation-of-Indigenous-Peoples-Representatives-nd-Institutions-in-Meetings-of-relevant-UN-bodies-on-Issues-Affecting-them.pdf>

¹¹ G.A. Res. 61/295, ¶ 5 (Sept. 13, 2007).

¹² G.A. Res. 69/2, ¶ 33 (Sept. 25, 2014).

United Nations system; it will result in more informed deliberations, better decisions, more successful programs, greater security for Indigenous rights, and progress toward achieving the purposes and principles of the United Nations Charter.

We urge the Council to request the OHCHR to examine how the Council's existing rules of procedure can be flexibly applied to accommodate the participation of Indigenous governance institutions. We also urge the Council to decide that the topic for the annual panel discussion on the rights of Indigenous Peoples will be "enabling Indigenous governance institutions to participate directly and permanently at the Council" at its 39th Session, and that a summary of the discussion be prepared, including recommendations for expanding participation to meetings of other relevant UN bodies.

*The California Association of Tribal Governments, Central Council of Tlingit and Haida Indian Tribes of Alaska, Citizen Potawatomi Nation, Metis Nation, and the Northern Arapaho Tribe, indigenous governance institutions or NGOs without consultative status, also share the views expressed in this statement.