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IMPLEMENTING THE OUTCOME DOCUMENT OF THE WORLD CONFERENCE ON INDIGENOUS PEOPLES

Enabling the Participation of Indigenous Governing Institutions at the United Nations

January 2017

Indigenous peoples' governing institutions are not presently recognized by the United Nations system in any formal sense. Without a special invitation, indigenous governing institutions cannot even attend or participate in sessions of the Human Rights Council or the Third Committee of the General Assembly, which adopt annual resolutions on the rights of indigenous peoples. In 2014, the Outcome Document of the World Conference on Indigenous Peoples¹ was adopted by the UN, expressly committing member states to consider how to enable the participation of indigenous peoples' representatives and institutions (governments) in the work of the UN. Since then, a series of consultations² among indigenous representatives and member states demonstrate broad support for the creation of a new UN participant category exclusively for indigenous governing institutions.³

Indigenous governing institutions are authoritative and duly constituted decision-making bodies recognized by their own indigenous constituents. Such bodies may be known as, among others, customary, traditional, or constitutional governments, indigenous parliaments, assemblies, or councils. It will be important to assure 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. Focusing this process on indigenous governing institutions will ensure their most meaningful and effective participation while maximizing limited UN and other resources, including those of the indigenous applicants.

Toward that end, we propose the following recommendations to enable indigenous governing institutions to participate in an effective and meaningful way in the work of the UN.

VENUES OF PARTICIPATION. The new category must ensure that indigenous governing institutions are, at the very minimum, able to participate in meetings of all relevant UN bodies, as called for in the Outcome Document. Indigenous governing institutions should enjoy opportunities to contribute to the work of, among others, the Economic and Social Council and its subsidiary bodies, the Human

¹ G.A. Res. 69/2, U.N. Doc. A/RES/69/2, ¶ 33 (Sept. 25, 2014).

² In 2016, the President of the 70th session of the General Assembly issued a compilation of views based on submissions and in-person consultations with indigenous peoples and states. The President of the current 71st session will conduct further consultations until March, 2017, with a draft text, likely a resolution, to be finalized and adopted by the Assembly during its current session ending September 11, 2017.

³ See 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, delivered to the Economic and Social Council*, U.N. Doc. A/70/84-E/2015/76 (18 May 2015).

Rights Council and its subsidiary bodies, the treaty bodies, the Universal Periodic Review process, and in open meetings of the General Assembly and its Main Committees, as well as any relevant closed meetings by invitation. All are relevant UN bodies dealing with issues concerning indigenous peoples. While the General Assembly does not have the authority to require participation in all UN activities, it should invite all bodies of the UN to enhance the participation of indigenous governing institutions.

PARTICIPATION MODALITIES. Indigenous governing institutions must be able to participate in activities of the UN in a manner comparable to that exercised by non-governmental organizations in consultative status with the Economic and Social Council. This would include, among other things, the ability to attend meetings, submit written information, make oral statements, and propose agenda items. As representative bodies, indigenous governing institutions should be able to exercise the right of reply where appropriate, and they should enjoy priority over NGOs with regard to seating and order of speaking as well as relaxed limitations the length of their oral and written statements. Opportunities for participation must not be allocated on a regional basis. The new category should not affect the existing ability of indigenous peoples' non-governmental organizations to work within the UN as they now do. Reform of existing arrangements for indigenous participation is not called for by the Outcome Document and is beyond the scope of this process.

ACCREDITATION MECHANISM. The new mechanism must have the authority to process applications, apply objective criteria, and decide whether an applicant is qualified to participate as an indigenous governing institution in the work of the UN. This work will require careful consideration of all applications, expertise among the members, and the ability to seek out additional information when necessary. The expert determinations must be final, but the applicant should have the ability to reapply. While deliberations of the body should be closed, decisions should be a matter of public record. The accreditation body must include some indigenous government leaders or, at minimum, must consult with indigenous government leaders, experts, or advisers, to ensure fair determinations. Independent experts serving in this capacity should not be construed as representatives of any indigenous people.

ACCREDITATION CRITERIA. While the accreditation body could further elaborate standards and procedures for accreditation, a preliminary set of criteria for applicants could include a three part determination. Indigenous governing institutions 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. The first requirement is that the government represents a people, that is, a people distinct from others and having shared bonds of history, language, culture, ethnicity, location, self-government, or other social or political bonds. Second, the people must be indigenous, as that term is used in practice and understood in the UN and other intergovernmental bodies, and as discussed in the Martinez-Cobo study. Some common elements used to identify indigenous peoples include descent from a people existing prior to the development of the present state or prior to conquest or colonization, connection to an ancestral territory, having distinct social, economic, cultural, and political institutions, and self-identification as a distinct people. The people must not be ethnic, national, linguistic, racial, or other groups that are not, in fact, indigenous. The third requirement is that the government be duly established by the indigenous people that it purports to represent, though no particular form of government should be required. Whatever process and standards are decided upon, they should remain flexible to allow further development through time and practice. The UN should provide the necessary financial and technical support for the accreditation of indigenous governing institutions to participate in the work of the UN.

Providing a new status for indigenous governing institutions will not only meet the call of the Outcome Document, it will enhanced international dialogue and contribute to good global governance, result in more informed deliberations, better decisions, more successful programs, greater security for indigenous rights, and progress toward achieving the objectives of the Declaration.