

INDIAN LAW RESOURCE CENTER

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Enabling the Participation of Indigenous Governing Institutions at the United Nations

*Supplemental submission to inform the final compilation of views as called for in A/RES/70/232
By the Indian Law Resource Center and the Citizen Potawatomi Nation*

July 1, 2016

The following comments address some of the outstanding questions and issues following the June 30, 2016 consultation with member states and indigenous participants. They are intended to supplement previous written submissions made by the Indian Law Resource Center, with many indigenous governments and organizations supporting, on April 8, May 13, May 20, and June 28.

1. There is no reason to believe that the United Nations will be overrun by great numbers of indigenous peoples' governing institutions seeking to participate at the United Nations.

Some comments during the June 30, 2016 consultation expressed concern that the United Nations would be overwhelmed or that the intergovernmental nature of the organization would be compromised due to large numbers of indigenous peoples' governing institutions seeking to participate. This is not true. Very few indigenous peoples' governing institutions will have the capacity and need to participate actively at the United Nations. Further, the United Nations accommodates the participation of many observers, non-governmental organizations, civil society actors, and others, without issue.

2. The United Nations need not adopt a universal definition of indigenous peoples in order to enable the participation of indigenous governing institutions.

Many states expressed concern that the absence of a clear international definition could present a legal obstacle to enabling the participation of indigenous peoples at the United Nations. This is not so. Indigenous peoples have participated in the work of the United Nations with much success without the need for a formal definition. In the exemplary parallel accreditation process of non-governmental organizations seeking consultative status with the Economic and Social Council, there is no strict definition of non-governmental

organizations. Indeed, there are parameters and standards set out, which are intended to guide the application and review process, but there is no strict definition as to who or what constitutes an eligible non-governmental organization.

It is true, however, 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.

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. These three factual elements should be the fundamental requirements for accreditation as an indigenous government. Naturally, additional, detailed information about the identity, location, and nature of the government will also be required. 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. 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.

3. There is broad support from indigenous peoples for the creation of a new status to enable the participation of their governing institutions in the work of the United Nations.

Some written submissions and some comments by participants in the June 30, 2016 consultation seemed to imply or 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. There is a well-established need for a new status for indigenous governing institutions in the

United Nations and this is the sole problem that the Outcome Document sought to address. In fact, more than 150 indigenous nations, organizations, and Native women's coalitions joined with the Indian Law Resource Center in the World Conference preparatory process seeking just such a new status, to provide *indigenous governing institutions* participation in United Nations processes and activities.

4. The body responsible for accreditation must be independent and not limited by the practices or laws of any particular member state.

Some written submissions and comments made during the June 30, 2016 consultation recommend establishing domestic or national accreditation councils, that is, authorizing states to first determine which indigenous governing institutions would be eligible to participate at the United Nations. This is unacceptable. The accrediting body must be established by the UN system and it must be independent and not limited by the practices, laws, or political views of any particular member state. The accrediting body must include some indigenous government leaders or, at minimum, must consult with indigenous government leaders, experts, or advisers. There is precedent in the UN system for the creation of a separate accreditation process and accreditation body by resolution of the General Assembly, as in the case of the National Human Rights Institutions.