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CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

www.indianlaw.org

MAIN OFFICE
602 North Ewing Street, Helena, Montana 59601
(406) 449-2006 | mt@indianlaw.org



WASHINGTON OFFICE
601 E Street, S.E., Washington, D.C. 20003
(202) 547-2800 | dcoffice@indianlaw.org

IMPLEMENTING THE OUTCOME DOCUMENT OF THE WORLD CONFERENCE ON INDIGENOUS PEOPLES

Creating a permanent body in the UN system to implement and monitor states' compliance with the UN Declaration on the Rights of Indigenous Peoples

July 2016

The United Nations Declaration on the Rights of Indigenous Peoples is a historic advancement and recognition of the rights of indigenous peoples. It includes the right of self-government, the right to exist as tribes and distinct peoples, the right of tribes to own land and resources, the right to enforcement and respect for treaties, the right to protection and access to sacred sites, and many other rights. Yet, it is generally understood that human rights instruments like the Declaration have little effect unless there are steps taken to monitor and implement their provisions.

The United Nations has recognized the need to create a strong and effective body capable of implementing and monitoring states' compliance with the Declaration. In the World Conference on Indigenous Peoples' Outcome Document the General Assembly invited the Human Rights Council to assess how existing UN mechanisms, including its Expert Mechanism on the Rights of Indigenous Peoples, can be modified and improved to achieve the objectives of the UN Declaration.¹ Toward this end, at the request of the Human Rights Council,² the Office of the High Commissioner for Human Rights convened an expert workshop in April, 2016, which resulted in its report "to review the mandate of the Expert Mechanism."³ It is expected that Guatemala and Mexico will prepare the resolution to strengthen the Expert Mechanism for consideration and adoption by the Council as early as September, 2016.

We recommend that the improved body, whatever form it takes, have a broad and far-reaching mandate, with new and innovative elements to promote respect for indigenous rights and to discourage violations. At a minimum, the body should have the authority to receive information and prepare reports with recommendations for actions by relevant actors such as states and the Human Rights Council. Specifically, the body should be able to invite, receive, gather, and consider information from all sources including states, indigenous peoples, UN bodies and agencies, and NGOs about developments relating to the rights in the UN Declaration. While the body should be relieved of its duty to provide thematic studies at the request of the

Council, it should have the authority to conduct studies on its own initiative and in response to information received from states, indigenous peoples, or others, and to conduct country visits. The body should also be able to provide expert advice and recommendations to states regarding the development of domestic legislation and policies relating to the rights of indigenous peoples.

The body must be able to do more than just assist individual states or develop state-specific reports and advice. To promote the Declaration at the international level, the body should be able to take note of and make reports on recurring or global problems, such as the need for indigenous land demarcation and titling processes, and work at all levels to engage states, international agencies, businesses, and others to carry out their human rights obligations concerning indigenous peoples. To achieve this, the body should have the authority to issue general observations or comments to address widespread or systemic issues, thus providing relevant stakeholders with expert views, interpretations, and analysis of the Declaration and recommendations for achieving its objectives, including general guidance about its application, at both the national and global levels.

We do not suggest nor recommend creating a new reporting requirement for states. It is not clear that adding another reporting requirement would significantly enhance implementation and compliance with the Declaration.

The body should pay particular attention to the epidemic of violence against indigenous women and children globally and monitor states' measures to ensure indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. The body could be encouraged to issue joint observations with other special mandate holders and bodies of the UN dealing with indigenous peoples' rights and can be empowered to provide technical assistance to the UN High Commissioner for Human Rights to intensify UN efforts to prevent and eliminate all forms of violence and discrimination against indigenous peoples and individuals, especially indigenous women and children. To further collaboration, coordination, and awareness of indigenous issues across the UN system, the body should report annually to the Human Rights Council, the General Assembly, and other relevant bodies and mechanisms.

The structure or composition of the body should be one that is efficient, workable, productive, and cost-effective. The body must be composed of independent experts, including both indigenous and non-indigenous experts. States as well as indigenous peoples must play a role in nominating and selecting the experts, having in mind the need to include experts from all regions of the world. They should be nominated and chosen based on their recognized competence and should serve in their personal capacity. Existing human rights treaty bodies that do similar kinds of work consist of 10 to 25 experts who meet from four to nine weeks per year. It appears that such larger bodies meeting periodically throughout the year are helpful. This improved body should meet three times per year for at least six weeks, or thirty working days. Experts should serve staggered four-year terms, with a rotating chair, to ensure consistency in reporting and project work. The working methods of the reformed body must be strengthened, but details must be flexible depending on the mandate and workload of the experts.

¹ G.A. Res. 69/2, U.N. Doc. A/RES/69/2, ¶ 28 (Sept. 25, 2014).

² A/HRC/RES/30/11 (Oct. 1, 2015).

³ A/HRC/32/36 (10 May 2016).