

INDIAN LAW RESOURCE CENTER

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 monitor and encourage implementation of the UN Declaration on the Rights of Indigenous Peoples

September 2015

Nothing would do more to achieve the objectives of the UN Declaration on the Rights of Indigenous Peoples than institutionalizing a permanent body in the UN with the authority and responsibility to promote compliance and monitor implementation of the Declaration. Development of a body with an appropriate mandate for implementing and monitoring must be swift but also thoughtful and deliberate, and it must include the full and effective participation of indigenous peoples, their representatives and institutions.

Recognizing the need for an implementing body, the UN General Assembly, in its Outcome Document of the World Conference on Indigenous Peoples, invited the Human Rights Council to “review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples, during the 69th session of the General Assembly, with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration.”¹ The Secretary-General was also requested to issue recommendations “regarding how to use, modify and improve existing United Nations mechanisms to achieve the ends of the UN Declaration.”² The Outcome Document makes clear that, in both endeavors, the views of indigenous peoples must be taken into account.³

The Indian Law Resource Center believes that the improved body should have a broad and far-reaching mandate, with new and innovative elements to promote respect for indigenous rights and to discourage violations, consistent with provisions of the UN Declaration.

The Secretary-General’s report,⁴ informed to some degree by an online questionnaire of indigenous peoples and states, recognizes that the mandate of the Expert Mechanism must be

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

2 *Id.* at ¶ 40.

3 *Id.* at ¶¶ 28, 40.

4 The Secretary-General, *Report of the Secretary-General on 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 and the General Assembly*, U.N. Doc A/70/84-E/2015/76 (May 18, 2015).

strengthened if it is to serve as a monitoring body. The report recommends that the new mandate include the authority to engage in direct communications and constructive dialogue with states and indigenous peoples. This is a good recommendation, but much more is needed.

If the body is to be effective and useful, it must have an appropriate mandate. The body should, at a minimum, be able to receive information and to prepare and issue reports with recommendations for actions by relevant actors, including the Human Rights Council. It should have the authority to invite, gather, seek, 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, and to encourage states and indigenous peoples to work collaboratively and cooperatively to find solutions to certain issues. It should be mandated to conduct studies on its own initiative or in response to information received from states, indigenous peoples, or others, and to conduct country visits. A body with such authority is consistent with past practices of the Council.⁵

It is important that the body pay particular attention to the rights and special needs of indigenous women and children to ensure their full protection from all forms of violence and discrimination, consistent with the UN Declaration.

The body must also have authority to issue general observations or comments to address recurring or general issues. Observations could take the form of interpretations or opinions about critical provisions of the UN Declaration. Such general observations and comments would provide states, international agencies, businesses, and indigenous peoples with expert interpretation and analysis of the Declaration and discussions of possible means for achieving its objectives at the national, regional, and international levels. These general observations would, among other things, share information and best practices and make recommendations about general problems or situations affecting indigenous rights. The body should also be encouraged to issue joint observations with other special mandate holders and bodies of the UN dealing with indigenous peoples' rights. However, 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 mandates of existing mechanisms relating to indigenous peoples should not be jeopardized. The Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples perform critical functions and should be maintained, if not improved.

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 and to promote gender balance. 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 two weeks at a time. It must meet twice per year at the very least.

⁵ See, e.g., Working groups on human rights and transnational corporations and other business enterprises, A/HRC/RES/17/4 (July 6, 2011); Enforced or involuntary disappearances, A/HRC/RES/7/12 (Mar. 27, 2008); and Arbitrary detention, Commission on Human Rights resolution (Apr. 15, 1997).