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**Enabling the Participation of Indigenous Peoples’ Representative Institutions**

**At the United Nations**

The UN Declaration on the Rights of Indigenous Peoples recognizes that indigenous peoples have the right to self-determination, to self-government, and the right to participate in decision-making in matters which affect their rights, through representatives chosen by themselves. The work begun by the United Nations at the World Conference on Indigenous Peoples to establish an appropriate status for indigenous peoples’ representative institutions to enable to them to participate in the work of the UN is a crucial step towards making these rights effective. The Indian Law Resource Center is encouraged that the Human Rights Council is now continuing this work, and we offer the following comments to contribute to the OHCHR Expert Working Group’s consideration of this important topic.

**Selection Criteria**

Regarding accreditation standards, we propose that 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. While no particular form of government should be required, such representative institutions must govern indigenous peoples, as that term has been used and understood in the United Nations and other intergovernmental bodies for many decades.

The first requirement is that the government represent 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.

Secondly, the people must be shown to be *indigenous*, as that term is used in practice and understood in the United Nations and other international intergovernmental bodies, such as the International Labor Organization, the World Bank, and the Inter-American Development Bank, and as discussed in the Martinez-Cobo study. Some common elements these sources use 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. This is a question of fact and history, and it cannot be determined by self-identification alone, but no particular definition should be required.

The third requirement is that the government be *duly established* or constituted by, and therefore, genuinely representative, of the indigenous people that it purports to represent. Naturally, such a government must be representative of, and responsible and accountable to, the people. However, because some duly established and genuinely representative indigenous governments are appointed by traditional authorities, we caution against requiring proof of a government’s democratic election as an essential element in its accreditation. Indigenous peoples’ representative institutions may, among other names, be known as customary, traditional, or constitutional governments, indigenous parliaments, assemblies, or councils.

Importantly, the accreditation standards should be somewhat flexible to allow development through time and practice. The accrediting body should also have the ability to determine what amount of evidence is needed to determine whether applicants meet the standards and criteria agreed upon.

Regarding the application process, initially, an applicant should be requested to provide documentation or other reliable evidence establishing their existence as a governing institution. Documentation could include written or oral testimony or statements. Each applicant should, for example, briefly describe the people, indigenous nation, or community that it represents, the governing powers or authority that it exercises, and the principal officials or office holders in the government. The accrediting body should consider evidence and views from all relevant sources and give some consideration to recognition of the applicant by the relevant state or states and by other indigenous peoples, though these factors alone cannot be determinative. Whatever accreditation standards are decided upon, they must be strong but flexible and responsive to the differences among indigenous governing institutions around the world. A government that meets these and other related requirements should be accredited to participate permanently, subject to periodic reporting on a reasonable basis, and the accredited government would then designate individuals to represent it in particular Human Rights Council meetings.

**Selection Mechanism**

First and foremost, the body must ensure 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. This work will require a body whose members have the appropriate expertise and who are able to give careful consideration to all applications and to request and seek out additional information when necessary in order to make sound decisions.

Secondly, the focus of this process must be on the accreditation of all genuine and legitimate indigenous governing institutions. The task of the body is not to *select* which of many qualified indigenous governing institutions should be chosen to participate in the work of the Council. Rather, the body should evaluate all applications evenly and fairly to determine which applicants meet established standards and operate as an indigenous peoples’ representative institution and to accredit those that do. To ensure candor, the meetings of the body should be closed but its decisions and reasoning should be a matter of public record.

Given the importance of this task and the nature of the research it will sometimes require, creation of a new body to process applications and recommend the accreditation of indigenous governing institutions is appropriate. The body must have the authority to establish its own working methods. While the task of identifying and accrediting indigenous peoples’ representative institutions is quite distinct from the registration processes used by the Permanent Forum and Expert Mechanism, the new body may still find it helpful to consult with these bodies and others in the UN in developing its working methods. Regarding composition and structure, the accreditation body must include some indigenous government leaders or, at minimum, must consult with indigenous government leaders, experts, or advisers. It is very important, however, that none of the experts be said to be acting in any representative capacity. Accreditation standards must be strong but flexible and responsive to the differences among indigenous governing institutions around the world, and the accreditation body must have the expertise and authority to make the necessary determinations. Such determinations must be final, though applicants should have the opportunity to reapply, similar to the practice of the NGO Committee.

**Venues of Participation**

The World Conference Outcome Document stated that, once accredited, indigenous peoples’ representative institutions should be able to participate in “meetings of relevant United Nations bodies.” In the context of the Human Rights Council, we believe the Council should enable the participation of indigenous peoples’ representative institutions during its sessions, in meetings of its subsidiary bodies and subsidiary expert mechanisms and forums, its working groups, and in intersessional activities, and other venues where indigenous peoples’ representative institutions judge the subject matter to concern the rights of indigenous peoples.

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**Participation Modalities**

Indigenous peoples’ representative institutions should have rights of participation that include the authority to attend and observe relevant meetings, submit documents and proposals, make statements, and propose agenda items when appropriate. In some instances, indigenous governing institutions should be able to exercise the right of reply particularly where an immediate response is warranted or where their rights are implicated.

As representative bodies, indigenous peoples’ representative institutions should have priority over NGOs with regard to seating and order of speaking, and relaxed limitations on speaking rights, all subject of course to reasonable rules of procedure for each meeting and at the discretion of the chair. While such practical limitations may at times be required, we caution against limiting the participation of indigenous peoples’ representative institutions on a regional basis by, for example, allocating a set number of speaking slots by region. This, we fear, could have the effect of establishing a de facto indigenous representative for an entire region of the world and would be unworkable.

Importantly, these new rules should not adversely affect or impair the existing arrangements for the participation of indigenous peoples’ organizations and NGOs accredited by the Economic and Social Council or other existing UN processes. This process is about ensuring that indigenous peoples’ representative institutions can participate and contribute to the work of the Council in a way that is appropriate to their status, not undermining existing arrangements.