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**Submission for the Workshop on Enhanced Participation made by the National Congress of American Indians and the Native American Rights Fund**

We have consistently advocated for the establishment of an appropriate, dignified status for Indigenous Peoples’ Representative Institutions within the UN system because we firmly believe that the best way to implement the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) and safeguard our rights for Indigenous Peoples, represented by their own representative institutions, to be able to participate fully and meaningfully in the work of the UN. As Peoples who have governed ourselves on our homelands since time immemorial, we should rightfully participate in the community of nations. In connection with determining an appropriate status for Indigenous Peoples within the United Nations system, Indigenous Peoples have been asked to comment on: Venues of Participation, Modalities of Participation, Selection Criteria and Selection Mechanism. We address each of these topics but start with a recitation of some of the basic international standards binding on the United Nations. As we will demonstrate, these standards, in and of themselves, go a long way toward suggesting the appropriate answers to these topics. Indigenous Peoples are sovereign governments with constituencies, which in many cases have been carrying out governance activities since time immemorial, generally long predating the formation of the State members of the United Nations. Our governance mechanisms include *inter alia* governing councils, parliaments, and traditional authorities. Alta Document, Theme 2, para 10.

Article 2 of the Declaration provides that “Indigenous peoples…are free and equal to all other peoples…” Article 3 of the Declaration provides that “Indigenous peoples have the right of self-determination.” Article 18 of the Declaration provides that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures…” Article 19 of the Declaration provides that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.” Article 33 of the Declaration states that “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions….” Article 41 of the Declaration provides that “The organs and specialized agencies of the United Nations system…shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.” The Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the recommendations from the Alta Outcome Document, and the World Conference on Indigenous Peoples Outcome Document, all provide essential underpinning for this submission.

More specifically, General Assembly Resolution 71/321 reaffirmed “… the United Nations Declaration on the Rights of Indigenous Peoples and the solemn commitment to respect, promote and advance and in no way diminish the rights of indigenous peoples and to uphold the principles of the Declaration, and recalled “the commitment by Member States to consider ways to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.”

The Human Rights Council and the broader United Nations family are duty bound to take concrete steps to reflect the Declaration in its mechanisms by including the participation of Indigenous Peoples’ representative institutions. A new status, not based on Economic and Social Council accreditation requirements, should be developed to allow Indigenous Peoples to participate in Human Rights Council and other meetings throughout the UN system, and to distinguish them from the representatives of civil society institutions, national human rights institutions, non-governmental organizations or local communities. There is a need to fill the longstanding gap within the structure of the United Nations system - a gap that currently prevents full and rightful participation by Indigenous Peoples’ Representative Institutions.

**VENUES OF PARTICIPATION**

All the international standards cited, *supra*, support, indeed require, full participation of Indigenous Peoples’ representative institutions throughout the UN system. See especially Articles 3, 18, and 19 of the Declaration. In light of the rights of self-determination, and free, prior and informed consent the refences to “matters which may affect” them must be read to be a matter decided by the Indigenous Peoples themselves. Because matters affecting them may occur in any of the UN venues, Indigenous Peoples require full and effective participation in all venues, short of voting. In this interconnected world, there are few issues which would not be deemed to affect Indigenous Peoples. To have the matter of what affects them determined by a third party or parties would seriously undermine the right of Indigenous Peoples to self-determination. Only we can rightfully determine where our interests lie. It is not possible to reach acceptable outcomes in multilateral decision-making processes affecting Indigenous Peoples without the full and effective engagement of their governance institutions. Venues should include, by way of illustration and not limitation, the General Assembly – including the second and third committees, the Human Rights Council, ECOSOC and regional commissions, subsidiary bodies, including at the country level, conflict resolution processes, other conferences, summits, and meetings convened by the UN, such as the high-level political forum on SDGs.

Nothing should change the abilities now existing to participate at the Permanent Forum or the Expert Mechanism on the Rights of Indigenous Peoples.

**MODALITIES OF PARTICIPATION**

We call for, at a minimum, permanent observer status within the UN system enabling our direct participation through our own governments and parliaments, which include *inter alia* our traditional councils and authorities. Alta Document, para 10. We should have effective participation in decision making at all UN fora on matters affecting Indigenous Peoples, including making oral and written statements, suggesting agenda items, and participating in the elaboration on resolutions that affect Indigenous Peoples.

The specific forms of Indigenous participation in the General Assembly should be consistent with those of the vast majority of current holders of observer status in the General Assembly, namely inter-governmental and other organizations.

Indigenous representative institutions should have priority over non-governmental organizations within United Nations fora when topics of special concern to Indigenous Peoples are being addressed. These modalities of participation are called for by Articles 3,18, and 19 of the Declaration.

The modalities under which indigenous peoples participate in other United Nations mechanisms, such as the Permanent Forum on Indigenous Issues, should be assessed to see whether any aspects of those modalities could be applicable to the work of the Human Rights Council and other UN organs.

Procedures that permit the appointment of Indigenous co-facilitators or advisers in processes that directly address Indigenous peoples such as in the World Conference on Indigenous Peoples and in this current process led by the President of the General Assembly should be commonplace.

**SELECTION CRITERIA**

Article 33 of the Declaration states that “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions….” Article 1, para 2 of the American Declaration on the Rights of Indigenous Peoples (American Declaration) provides that “Self-identification as indigenous peoples will be a fundamental criteria for determining to whom this Declaration applies.” Thus, self-identification is an important, indeed a necessary, criteria to determine to whom the new status applies. That does not mean that it is the sole criterium, or that it is sufficient in and of itself.

The criteria required to obtain accreditation must be flexible enough to account for the wide variety of Indigenous peoples’ historical experiences, and governance institutions, including traditional forms of governance, regional representative councils and parliaments. At the same time, they must be stringent enough to ensure legitimacy. A necessary factor for qualifying as an Indigenous Peoples’ representative institution is that they genuinely represent one or more people/s that self-identifies as Indigenous. Other relevant factors, none of which are determinative by themselves, include that they are recognized as Indigenous by other Indigenous Peoples, that the institution represent a people with ancestral connections with lands, territories and resources, who share history, language and culture, who exercise the collective rights of the people, who have the authority to practice self-government and, where relevant, who have entered into treaties, agreements or other constructive arrangements. Recognition by the State in which the Indigenous People is located is relevant, but not essential. Indigenous Peoples representative institutions should have the exclusive authority to designate their own individual representatives in accordance with their own procedures, but the said representatives should have appropriate credentials from the institutions that they represent. Similarly, Indigenous representatives should be recognized by their own constituents as such. There cannot be a non-objection clause which would give a state the right of veto.

All informal and formal consultations and negotiations in the United Nations associated with enhancing Indigenous peoples’ participation, including the Human Rights Council and General Assembly, must be conducted in an open, inclusive and transparent manner including Indigenous Peoples at every stage. There should be an intergovernmental negotiation process under the Human Rights Council mandated to develop draft modalities for the participation of indigenous peoples in the work of the Council.

**SELECTION MECHANISM**

Very possibly, a new body will need to be created to recognize and accredit Indigenous peoples’ representative institutions as eligible for a new category of participation. The new body could consist of both Indigenous peoples representatives and states or, alternatively, Indigenous and state appointed independent experts. Independent experts might be appointed using the method currently employed to select members of the Permanent Forum on Indigenous Issues. The Permanent Forum on Indigenous Peoples experts might be mandated to oversee accreditation, although perhaps any new arrangement should be separate from any existing UN bodies or mechanisms, in part to allow the Permanent Forum to focus on its existing mandate. There should be Indigenous representatives from each of the seven regions and assessment could take place at the regional level. The model used for the Facilitative Work Group of the Local Communities and Indigenous Peoples Platform, where Indigenous representatives are chosen by themselves, from each region, with no requirement for State approval is well worth consideration. There can be no State veto allowed.

Resolution 2005/74 of the Commission on Human Rights regarding the enhancement of the participation of national human rights institutions in its work, which granted speaking rights to those institutions with a status under all its agenda items, and dedicated seating to them. That precedent could serve as a basis for the Council to deal with enhanced participation for Indigenous Peoples.

**CONCLUSION**

A new, dignified status for Indigenous Peoples in all UN processes is a huge gap that must be filled by the UN. It is mandated by the Declaration and other international standards. The content of those standards in large part determines the parameters and nature of that status.