

# 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

June 28, 2016

## **Enabling the Participation of Indigenous Governing Institutions At the United Nations**

*Written contribution on how “to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them” as called for in A/RES/69/2 and A/RES/70/232*

SUBMITTED BY THE CHEROKEE NATION, CITIZEN POTAWATOMI NATION, EWIIAAPAAYP BAND OF KUMEYAA Y INDIANS, METIS NATION, TONAWANDA SENECA NATION, AND THE UNITED SOUTH AND EASTERN TRIBES (USET) SOVEREIGNTY PROTECTION FUND

The third compilation of views has made progress in clarifying some of the issues and we are grateful for this new compilation. The following observations and proposals are intended to clarify the need to enable the participation of **Indigenous governing institutions** at the United Nations and to assure that the new status, the necessary standards for accreditation, and the rules for participation will permit Indigenous governing institutions to participate effectively in the work of the United Nations.

### **I. This process is intended to focus on Indigenous governing institutions, not non-governmental organizations or groups**

The third compilation of views continues to refer to participation in the United Nations by “Indigenous peoples” generally, as well as by “Indigenous peoples’ organizations”, “Indigenous peoples’ institutions”, and “Indigenous peoples’ representative institutions and organizations”. The compilation of views does not always distinguish among these terms nor make clear their meanings. Restraint and caution must be exercised when using such terms as they do not mean the same thing and cannot be used interchangeably.

The United Nations, through the Outcome Document of the World Conference on Indigenous Peoples, has recognized the important distinction between voluntary organizations comprised of Indigenous individuals on the one hand and Indigenous governing institutions

representative of their constituents on the other. Indeed, the third compilation itself recognizes that, “There appears to be a convergence of views that qualification for a new category of participation should center on indigenous peoples [*sic*] representative institutions and not on indigenous peoples as such”, yet continues to use conflicting or inconsistent terminology throughout the document.

Some of the misunderstanding may arise because of the use of terms that are not always well understood. The term “Indigenous people(s)” is sometimes used unwisely, in our view, to mean practically any Indigenous group of any kind. Others use the term in its proper sense to mean a “people” (a people distinct from others that has shared bonds of history, location, culture, language, self-government, ties to land, or other such bonds) that is “Indigenous” as that term is used in international practice, including the definitions in the ILO Convention No. 169, in the Martinez-Cobo study, and in other international bodies and instruments. Some common features of such definitions include descentance 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. These are all elements that should be taken into account in a flexible manner in determining what constitutes an Indigenous governing institution and who constitutes an Indigenous people in this process.

It would be helpful if States and Indigenous participants could be clear when they make their submissions about what Indigenous groups they are referring to. We might suggest that Indigenous groups or organizations that are not “peoples” in the proper sense should be referred to as Indigenous groups, organizations, or non-governmental organizations. One submission referred to “voluntary indigenous organizations”, and we would understand this to be some form of organization or group, not a people in the proper sense. Without doubt these organizations and groups should continue to participate fully, but the existing rules of the United Nations appear to accommodate their participation already, and there does not appear to be any serious problem in that regard.

We believe it is a mistake to turn the present process into an effort to create a new status for *all* Indigenous participants. Such an effort goes far beyond what has been called for by the World Conference and related resolutions and reports of the Human Rights Council, the Expert Mechanism, and the Secretary-General, and by the many recommendations of Indigenous and State participants. Such a broad effort will inevitably be complex and difficult and is beyond the scope of this process. Instead, the present process should address the need to enable genuine Indigenous governance institutions to participate in the work of the United Nations.

## **II. “Enabling” the participation of Indigenous governing institutions necessarily means affording such institutions a level of participation that will make their contributions effective in a greater number of bodies and meetings of the United Nations**

The World Conference Outcome Document calls for consideration of “ways to enable the participation of indigenous peoples’ representatives and institutions”. For the purposes of our submission, we refer to such groups as Indigenous governing institutions, which are the authoritative and duly constituted decision-making bodies of their constituent Indigenous

peoples. As representative governmental entities with decision-making authority, Indigenous governing institutions should necessarily enjoy participation beyond that exercised by non-governmental organizations in consultative status with the Economic and Social Council, such as priority in regard to seating and order of speaking, and relaxed limitations and rules on the length of oral statements and written submissions.

Indigenous governing institutions are *not* voluntary Indigenous organizations comprised of individuals or groups. Indigenous governing institutions are accountable and responsible to a real constituency of people, and there should be appropriate treatment and adequate recognition of their self-governance in the United Nations system. Indigenous governing institutions are in need of a procedure that will enable their direct and permanent participation in the work of the United Nations. The procedure to enable their participation will necessarily require that the Indigenous government (1) represents a people (2) that the people represented are, in fact, Indigenous and (3) that the government is duly established by, representative of, and accountable to, the people.

The Outcome Document also calls for the participation of Indigenous governing institutions in “meetings of relevant United Nations bodies on issues affecting them”. This process should take a generous view of what constitutes a relevant United Nations meeting or body. At minimum, Indigenous governing institutions should initially be enabled to participate in the Economic and Social Council and its subsidiary bodies, the Human Rights Council and its subsidiary bodies, the treaty bodies, and in meetings of the General Assembly and its Main Committees. This would meet the call of the Outcome Document and enable the effective, direct, and permanent participation of Indigenous governing institutions in the work of the United Nations.

In order to ensure the effective participation of Indigenous governing institutions, the United Nations system, as appropriate, should provide the necessary financial and technical support for Indigenous peoples’ governing institutions seeking to participate in the work of the United Nations.

Indigenous governing institutions, duly-constituted and representing their constituents, members, and peoples, are the best and most appropriate voices to speak to matters that affect them in the United Nations, such as violence against Indigenous women, climate change, sustainable economic development, and protecting indigenous cultures, lands, and resources. They are responsible and accountable to their people. Enabling Indigenous governing institutions to speak for themselves is not only the right thing to do in principle to meet the call of the World Conference Outcome Document, it will yield significant benefits to the UN system and will result in more informed deliberations, better decisions, more successful programs, greater security for indigenous rights, and progress toward achieving the purpose of the UN Declaration.

Cherokee Nation  
W.W. Keeler Tribal Complex  
17675 S. Muskogee Ave.  
Tahlequah, OK 74464  
UNITED STATES

Citizen Potawatomi Nation  
1601 South Gordon Cooper Drive  
Shawnee, Oklahoma 78401  
UNITED STATES OF AMERICA

Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, California 91901  
UNITED STATES OF AMERICA

Metis Nation  
#4 – 340 MacLauren Street  
Ottawa, Ontario K2P 0M6  
CANADA

Tonawanda Seneca Nation  
7027 Meadville Road  
Basom, New York 14013  
UNITED STATES OF AMERICA

United South and Eastern Tribes Sovereignty Protection Fund  
711 Stewarts Ferry Pike  
Nashville, Tennessee 37214  
UNITED STATES OF AMERICA