

INDIAN LAW RESOURCE CENTER

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FOLLOW-UP TO 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

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The UN General Assembly in ¶ 28 of its Outcome Document 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. In undertaking this assessment, the Council must take into account the views of indigenous peoples.

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

The body should, at a minimum, have the authority 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. 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. The body should be authorized to prepare and issue reports with recommendations for actions by relevant actors, including the Human Rights Council. A body with such authority is consistent with past practices of the Council.¹ An innovative measure of the body could be to provide states and indigenous peoples with a fair, expert body in which to seek consensus resolutions on issues they face. This sort of process could be initiated and continue on the basis of the consent of both parties, and could seek to avoid or resolve any conflicts using cooperative measures.

¹See, 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/27/1 (Oct. 1, 2014); and arbitrary detention, A/HRC/RES/24/7 (Oct. 8, 2013).

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 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 both the national 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. It would be useful to encourage the body to issue joint observations with other special mandate holders and bodies of the UN dealing with indigenous peoples' rights. Authority to issue general observations should include the review of new developments regarding indigenous peoples' rights.

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 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 two weeks at a time. It must meet twice per year at the very least. These details, however, should be resolved later, in light of decisions about the body's methods, responsibilities, and expected workload.