

# INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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## **Report on the United Nations work to enable the participation of indigenous peoples' representative institutions (IPRIs) at the UN: February 27-28 Consultation**

March 20, 2017

The President of the General Assembly of the 71<sup>st</sup> Session of the UN General Assembly (GA), through his four advisers – Jim Anaya and Claire Charters, and Kai Sauer (Finland) and Martha Ama Akyaa Pobee (Ghana) – conducted a consultation with indigenous people and member states at UN Headquarters in New York City on February 28, 2017. Previous consultations were conducted by the President of the 70<sup>th</sup> Session on May 11, May 18, and June 30, 2016, and by the current President on December 14-15, 2016 and January 30, 2017. The current President will hold additional final consultations with indigenous peoples on April 26 (3pm-6pm) and May 3 (10am-1pm) during the annual session of the Permanent Forum on Indigenous Issues. States will then meet between May and June to negotiate the remainder of the resolution.

The Indian Law Resource Center, with tribal leaders and organizations, participated in the consultation on Feb. 28 and organized ancillary meetings with member states (Russia, India, South Africa, and the United States) on Feb. 27. Other participants from the United States included: Will Micklin, Center Board Member, 2<sup>nd</sup> Vice President of the Central Council of Tlingit and Haida Indian Tribes of Alaska; Linda Fong, Self-Governance Director, Ewiiapaayp Band of Kumeyaay Indians; Shena Matrious, Government Affairs Relations/Special Projects, Mille Lacs Band of Ojibwe; Joshua Riley, Policy Analyst, Choctaw Nation; the Navajo Nation delegation (Leonard Gorman, Executive Director, Navajo Nation Human Rights Commission; Rodney Tahe, Policy Analyst, Navajo Nation Human Rights Commission; Nathaniel Brown, Legislative Councilman; Mihio Manus, Senior Public Information Director; and Peterson Zah, Ambassador to the UN); Frank Ettawageshik (United Tribes of Michigan), Ron Allen (Jamestown S'klallam), Heather White Man Runs Him (NARF), Virginia Davis (NCAI), and Jackie Johnson Pata (4<sup>th</sup> Vice President of the CCTHITA and NCAI).

The consultation lasted from 10am-1pm and 3pm-6pm and was organized by the four topics addressed in the [elements paper](#): venues of participation, participation modalities, selection body, and selection criteria.

**Venues.** Regarding *where* and which UN bodies indigenous peoples' representative institutions (IPRIs) would be able to participate, there was broad support for participation in all public (and even some closed meetings by invitation) of the Economic and Social Council (ECOSOC) and the Human Rights Council, as well as their functional commissions and subsidiary bodies such as the Commission on the Status of Women and special procedures dealing with human rights issues. Many countries supported the participation of IPRIs in the General Assembly through, at least, the Third Committee and Second Committee of the GA (United States, "Group of Friends",<sup>1</sup> Honduras, and Venezuela). Some dissenting countries prefer a gradual approach, limiting initial participation to ECOSOC with the possibility of adding venues in the future (China, Russia, Bangladesh, India, Iran).

**Modalities.** Regarding *how* IPRIs would be able to participate at the UN, most supported, at minimum, opportunities for IPRIs to speak and submit written information with some preference over NGOs. Some supported opportunities for IPRIs to exercise the right of reply and to propose agenda items. And others recommended including explicit reference to those rights reserved for member states – to vote, raise points of order, and to propose, negotiate, and cosponsor resolutions. There was some discussion of the idea ensuring regional balance or geographical representation in the allocation of speaking slots and while some supported this, most opposed insisting on exact parity in numbers as not all regions will have equal numbers of qualified applicants able to attend every meeting.

**Selection Body.** Regarding *who* would process applications and accredit qualified IPRIs for participation at the UN, there was broad support for a new body comprised of equal numbers (up to fourteen) of members from indigenous peoples and member states serving in their personal capacity and selected from the seven sociocultural indigenous regions of the world. Some countries continue to insist on some state control over the body, by either retaining final GA review authority over decisions of the body or by inclusion of the no-objection procedure<sup>2</sup> (Russia, Bangladesh, China, Iran, India, Indonesia). Other countries opposed state involvement and use of the no-objection procedure (United States, Peru, Argentina, New Zealand, Canada, Australia, European Union). China proposed a two-step procedure: establish an indigenous advisory body with the authority to make recommendations about applicants to the all-state selection body, which would then weigh both the advisory body's recommendation with the relevant application and make its final decision. This was denounced by New Zealand as being overly bureaucratic and time consuming. There was some discussion of, but not much appetite for, consideration of an appeals process with opportunities for the appellee to respond. There was more discussion of whether and how the selection body could consider applicants on a regional basis in awarding accreditation. Most opposed the idea of commensurate/equal participation on a regional basis, arguing it would be a barrier to participation for regions with greater numbers, capacity, and interest, all of which will vary depending on the type of meeting.

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1 The Group of Friends is comprised of Argentina, Australia, Bolivia, Brazil, Canada, Colombia, Denmark, Ecuador, El Salvador, Finland, Guatemala, Mexico (Chair), New Zealand, Nicaragua, Norway, Paraguay, Peru, Spain. Observers include the United States and Chile.

2 While the no-objection procedure is not expressly defined in any UN document and it has had limited use, it has been employed by member states to restrict access of certain NGOs that are not in consultative status with ECOSOC to high-level conferences and other meetings of the UN. The main problems with use of the no-objection procedure is that objections lodged by states lack transparency, they are ad hoc, and there is no accountability as NGOs cannot tell which states are objecting and have no opportunity to respond accordingly.

**Selection Criteria.** Regarding *what* factors would be used to weigh an IPRI's application, the elements paper proposed a two-track system: an expedited process for those IPRI's with state recognition and additional criteria for those without state recognition. While most participants preferred that criteria be evenly applied and should not provide preferential treatment for state-recognized entities, some thought the two-track process would prove more efficient and expedient. Some states thought IPRI's should be located on their territory and several called for a prescriptive definition of "indigenous peoples"; most others opposed a universal definition.

There are outstanding issues or challenges to overcome in the next and final consultations scheduled for April 26 and May 3. First and perhaps most importantly, is the level of state control or state safeguards. Three options have been presented: 1) inclusion of the no-objection procedure; 2) establishment of an all-states selection body; and/or 3) state recognition as an essential criterion. The no-objection procedure only has precedent in setting the level of participation at high level conferences in the GA for NGOs without UN consultative status. Because this current process will establish a new credentialing body with its own authority and working methods and because IPRI's are not NGOs, application of the no-objection procedure appears to be inapplicable here. Regardless, if the no-objection procedure becomes inevitable, there must be sufficient transparency and accountability of the procedures, operations, and working methods of the selection body. Regarding whether the selection body will be comprised equally of states and indigenous peoples, or entirely of states with some possibility of an advisory body of indigenous peoples, it seems either option would be workable. Regardless, the experts should serve in their personal capacity as other GA subsidiary bodies do, and their working methods must establish a public record and rationale of its decisions. Regarding selection criteria, a two-track system should be given more thought in the interest of efficiency, though preference would be for all criteria to be applied fairly and equally among applicants.

Another challenge is the idea of ensuring some degree of commensurate regional representation of IPRI's. We have repeatedly stated this is unworkable and unacceptable and risks minimizing the distinct legal and political attributes of indigenous governments and nations, as well as contravening the entire objective of this process. Each IPRI must be authorized to speak on their own behalf, though some practical considerations will need to be made. There are many indigenous peoples in some regions and few in others, and it would be manifestly unfair to deny qualified applicants on this basis alone.

These considerations are important to bear in mind as their resolution will have some bearing on what IPRI's will actually be able to do and where throughout the UN they will be able to participate once they are accredited. Importantly, at this stage, most states support the idea of a new status for IPRI's with rights commensurate with those exercised by NGOs in consultative status and possibly some additional rights such as the right of reply, the right to propose or be invited to propose agenda items, the right to participate in certain private meetings by invitation, and some designated seating and preference for speaking. It remains to be seen whether this support will stick during the intergovernmental phase of negotiations, which commence on May 5, 2017.