

## 4 Recommendations Proposed by 131 Indigenous Nations and 23 Organizations\*

The mandate of the UN World Conference on Indigenous Peoples is to *produce a concise action oriented outcome document that will contribute to the realization of the rights of indigenous peoples, pursue the objectives of the UN Declaration on the Rights of Indigenous Peoples and promote achievement of all internationally agreed development goals*. We\* call for the adoption of the following:

<sup>1</sup> ***An Implementing Body for the UN Declaration*** — Decide to create an implementing and monitoring body with a mandate to promote and monitor implementation of the Declaration and to encourage compliance with the obligations expressed in the Declaration. Such a monitoring and implementation body should have a mandate to receive relevant information, to share best practices, to make recommendations, and otherwise to work toward the objectives of the Declaration. The body should be made up of expert members, including indigenous experts. The General Assembly should establish a process, which would include including indigenous peoples' representatives, for elaborating the structure and mandate of such a body or mechanism at the earliest possible time.

<sup>2</sup> ***Action to Combat Violence Against Native Women*** — Decide to convene a high-level conference to examine challenges to the safety and well-being of indigenous women and children and to share perspectives and best practices on the realization of the rights of indigenous women and children under the UN Declaration on the Rights of Indigenous Peoples with respect to protection against all forms of violence and discrimination;

Require that a UN body for monitoring and implementing the Declaration give particular attention, on at least an annual basis, “to the rights and special needs of indigenous ... women, youth, and children ... in the implementation of the UN Declaration;” and

Appoint a Special Rapporteur to focus exclusively on human rights issues of indigenous women and children, including but not limited to violence against them and on changing state laws that discriminate against them.

<sup>3</sup> ***An Appropriate Status for Indigenous Peoples within the UN*** — Create a distinct and appropriate status for Indigenous Peoples within the United Nations system in order to regularize and facilitate the participation of Indigenous Peoples in the work of the United Nations. Such a status within the UN system must give appropriate recognition to Indigenous Peoples represented by their own governments. The Permanent Forum on Indigenous Issues [or the Expert Mechanism on Rights of Indigenous Peoples], in consultation with States and Indigenous Peoples, should be given responsibility for elaborating a resolution on this matter for adoption by the General Assembly at the earliest possible time.

<sup>4</sup> ***Action to Protect Rights to Religious and Cultural Sites*** — Take priority action to protect indigenous peoples' rights to their religious and cultural sites, and recommends particularly that the World Conference request the Office of the High Commissioner for Human Rights, the Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples, the UN Educational, Scientific and Cultural Organization, and the Permanent Forum on Indigenous Issues to gather and share relevant information and best practices, conduct expert meetings and interactive panels, prepare studies, issue reports, and make concrete recommendations for the implementation of indigenous peoples' right to maintain, protect, and have access in privacy to their religious and cultural sites and to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies. The recommended implementing and monitoring mechanism for the UN Declaration, when it is created, should also give priority attention to the protection of indigenous peoples' religious and cultural sites.

\*Cherokee Nation, MOWA Band of Choctaw Indians, Citizen Potawatomi Nation, Tonawanda Seneca Nation, Mille Lacs Band of Ojibwe, Bad River Band of Lake Superior Chippewa Tribe, Yurok Tribe, Jamestown S'Klallam Tribe, Sisseton Wahpeton Oyate, Viejas Band of Kumeyaay Indians, Soboba Band of Luiseno Indians, La Jolla Band of Luiseno Indians, Karuk Tribe, Central Council of Tlingit and Haida Indian Tribes of Alaska, Yupiit Nation, Akiak Native Community, Tetlin Village Council, Anvik Tribal Council, Confederation of Sovereign Nanticoke-Lenape Tribe (Nanticoke Lenni-Lenape Tribal Nation, Lenape Indian Tribe of Delaware, and the Nanticoke Indian Tribe of Delaware), Hoopa Valley Tribe, Quinault Nation, Mashantucket Pequot Tribal Nation, Nez Perce Tribe, Shoalwater Bay Tribe, Federation of Native Communities of Ucayali (30 indigenous communities in Peru), National Congress of American Indians, California Association of Tribal Governments (32 tribes: Big Lagoon Rancheria, Hoopa Valley Tribe, Karuk Tribe of California, Pit River Tribe, Resighini Rancheria, Smith River Rancheria, Susanville Indian Rancheria, Cher-Ae Heights Indian Community of the Trinidad Rancheria, Wiyot Tribe, Yurok Tribe of the Yurok Reservation, Southern District, Cahuilla Band of Mission Indians of the Cahuilla Reservation, Ewiiapaay Band of Kumeyaay Indians, Jamul Indian Village, Los Coyotes Band of Cahuilla and Cupeño Indians, Mesa Grande Band of Kumeyaay Indians, Morongo Band of Mission Indians, Ramona Band of Cahuilla Indians, Soboba Band of Luiseno Indians, Sycuan Band of the Kumeyaay Nation, Central District, Big Pine Reservation, Big Sandy Rancheria, California Valley Miwok Tribe, Cloverdale Rancheria, Enterprise Rancheria of Maidu Indians of California, Greenville Rancheria of Maidu Indians of California, Habematolel Pomo of Upper Lake, Hopland Band of Pomo Indians of the Hopland Rancheria, Lone Band of Miwok Indians of California, Northfork Rancheria of Mono Indians of California, Scotts Valley Rancheria Band of Pomo Indians of California, Kashia Band of Pomo Indians of the Stewarts Point Rancheria), United South and Eastern Tribes (26 tribes: Eastern Band of Cherokee Indians, Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, Seminole Tribe of Florida, Chitimacha Tribe of Louisiana, Seneca Nation of Indians, Coushatta Tribe of Louisiana, Saint Regis Mohawk Tribe, Penobscot Indian Nation, Passamaquoddy Tribe – Pleasant Point, Passamaquoddy Tribe – Indian Township, Houlton Band of Maliseet Indians, Tunica-Biloxi Tribe of Louisiana, Poarch Band of Creek Indians, Narragansett Indian Tribe, Mashantucket Pequot Tribal Nation, Wampanoag Tribe of Gay Head (Aquinnah), Alabama-Coushatta Tribe of Texas, Oneida Indian Nation, Arrostook Band of Micmacs, Catawba Indian Nation, Jena Band of Choctaw Indians, Mohegan Tribe, Cayuga Nation, Mashpee Wampanoag Tribe, Shinnecock Indian Nation), Native American Rights Fund, Indian Law Resource Center, Americans for Indian Opportunity, Self-Governance Communication and Education Tribal Consortium, Amazon School for Human Rights, Regional Organization of the Interethnic Association for the Development of the Peruvian Rainforest in Ucayali, Native Women's Society of the Great Plains, Women Spirit Coalition, Native Alliance Against Violence, Alliance of Tribal Coalitions to End Violence, Southwest Indigenous Women's Coalition, Yupik Women's Coalition, Emmonak Women's Shelter, Strong Hearted Native Women's Coalition, Kene Me-Wu Family Healing Center, National Native American AIDS Prevention Center, Papa Ola Lokahi, Native Hawaiian Health Board, Observatoire National du Patrimoine, and the Aboriginal Commission on Human Rights & Justice.

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## **Implementing the UN Declaration on the Rights of Indigenous Peoples: A UN Body for Promoting Respect for Indigenous Rights**

May, 2014

The UN Declaration on the Rights of Indigenous Peoples now enjoys worldwide support. It is an historic declaration of rights, and the UN General Assembly has decided to hold the UN World Conference on Indigenous Peoples in order to “contribute to the realization of the rights of indigenous peoples, pursue the objectives of the [Declaration], and promote the achievement of all internationally agreed development goals.” A/RES/66/296 (17 September 2012). The General Assembly has explicitly decided to take action to realize or implement the rights in the Declaration, and it is urgent that a body be created within the United Nations to carry on this work after the Conference.

Many indigenous peoples in various regions of the world are now calling for the creation of some form of implementing body to promote compliance with the Declaration and to promote the realization of the rights of indigenous peoples. One group of more than 72 indigenous nations in North America has made the following recommendation for action by the World Conference:

*Recommends* that the UN World Conference decide to create an implementing and monitoring body with a mandate to promote and monitor implementation of the Declaration and to encourage compliance with the obligations expressed in the Declaration. Such a monitoring and implementation body should have a mandate to receive relevant information, to share best practices, to make recommendations, and otherwise to work toward the objectives of the Declaration. The body should be made up of expert members, including indigenous experts. The General Assembly should, in conjunction with indigenous peoples, establish a process, which would include indigenous peoples’ representatives, for elaborating the structure and mandate of such a body or mechanism at the earliest possible time.

Recommendations for an implementing and monitoring body have also been made by the Alta Outcome Document, by the Inuit and Sami Peoples in the Nuuk Arctic Declaration, by Indigenous Peoples in Asia, by the North American Indigenous Peoples Caucus, by the African Regional Preparatory Meeting, by the Preparatory Meeting of America Latina y el Caribe, and by the Preparatory Meeting for Pacific Indigenous Peoples. All of the recommendations and proposals deserve consideration.

Experience shows that human rights instruments may have practically no effect unless steps are taken to implement the rights in question, that is, to make it possible to exercise or enjoy the rights. An implementing and monitoring body will improve respect for indigenous rights, will encourage and foster implementation at the state level, and will help to achieve the objectives of the Declaration, especially improving the well-being of indigenous peoples and helping to avoid or stop the abuse of their rights.

International oversight is needed especially to guard against fraud, misdealing, and legal manipulation to deprive indigenous peoples of their lands and natural resources. The great disparities in economic and political power that most indigenous peoples endure make them especially vulnerable to wrong-doing. The need for an international mechanism to implement the UN Declaration is discussed in an expert paper submitted to a UN Expert Seminar on indigenous rights in January 2006.  
HR/GENEVA/IP/SEM/2006/BP.2

Without strong and effective measures at the international level, the promise of the UN Declaration will be lost. The Declaration needs an implementing and monitoring body because of the grave human rights situations of indigenous peoples in many parts of the world, especially the horrendous violence against certain indigenous people and the pandemic of violence against indigenous women and girls. An implementing and monitoring body is appropriate for the Declaration, because it already enjoys a global consensus, because it contains very specific and detailed provisions, and because the Declaration calls for specific state actions to implement rights.

Implementing bodies or mechanisms have, of course, long been used to promote respect for human rights instruments and to encourage compliance by states. UN practice supports creating a monitoring and implementing body for a human rights declaration. For example, the mandate to monitor and promote the implementation of the Declaration on the Protection of all Persons from Enforced Disappearances was given to the Working Group on Enforced and Involuntary Disappearances in 1992. The Special Committee on Decolonization was created to implement the 1960 General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples. Of course, many committees of experts, such as the Human Rights Committee, are monitoring implementation of the major human rights treaties.

The UN Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples have important roles, but the necessary implementation and monitoring work is beyond what these bodies with their already heavy mandates can do, and it is beyond what they are authorized to do. We believe that a new body, made up of independent experts, including indigenous experts, with a broad, clear mandate, will be the best approach.

We believe an implementing body should be efficient and workable, that is, productive and cost-effective. There are many possible variations for the design and functioning of such an implementing body. To illustrate with one possible example, the body could be comprised of as few as five or six experts (or up to 14) of high moral

character and recognized competence, serving in their personal capacity, including as nearly as possible equal numbers of indigenous and non-indigenous experts. States as well as indigenous peoples should play roles in nominating and selecting the experts, having in mind the need to include experts from all the regions of the world. Expert members of the body should serve terms of at least four years.

The body should have the purpose of promoting respect for the rights of indigenous peoples and encouraging the implementation of these rights by states. For these purposes, the body should be authorized to receive information from states and from indigenous peoples, UN agencies, and NGOs among others; to conduct studies; to invite information from states and other sources; to share information on best practices; to make reports and recommendations to the Human Rights Council; and to make general comments concerning the implementation and interpretation of the Declaration on the Rights of Indigenous Peoples.

The implementing body should meet at least twice per year for up to two weeks per session. The Secretary-General should, of course, provide the necessary staff and facilities for the work of the body. The body should make its own rules of procedure based upon the relevant practices of other such bodies in the UN system.

After states have made the decision to create such a body, it will be necessary to discuss and negotiate the details about the structure, mandate, and functioning of the body. The process of elaborating the structure, mandate, and functioning of the body must be one that includes full and active participation by indigenous peoples.

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## **Combating Violence Against Indigenous Women Proposed Recommendations for the World Conference on Indigenous Peoples**

October 18, 2013

On September 22-23, 2014, the United Nations will host a World Conference on Indigenous Peoples of all countries of the UN, with the participation of indigenous peoples and non-governmental organizations. The result will be an action-oriented outcome document, which among other things, will pursue the objectives of the UN Declaration on the Rights of Indigenous Peoples.

***Violence Against Indigenous Women and Girls is a Pandemic.*** Actions to stop the horrendous violence against indigenous peoples, including the pandemic of violence being inflicted on indigenous women and girls, are critically needed. Indigenous women often suffer disproportionately high, multiple forms of discrimination, violence, and murder based not just on their gender, but also because they are indigenous and members of indigenous peoples' communities.

***UN Action is Needed to End the Violence Now.*** United Nations action is crucial to restore safety to indigenous women, children, and communities and to address indigenous rights in the UN Declaration. More than 70 Indian nations are urging the UN General Assembly to adopt recommendations at the World Conference, including a three-part recommendation to combat violence against indigenous women and children. That recommendation, which is also supported by indigenous and indigenous women's organizations such as the National Congress of American Indians Task Force on Violence Against Women, National Indigenous Women's Resource Center, Indian Law Resource Center, and Native American Rights Fund, is focused, reasonable, workable, and realistic for the United Nations. Its three actions would be valuable in protecting the rights of indigenous women globally— today and tomorrow:

1. *A decision to convene a high-level conference to examine challenges to the safety and well-being of indigenous women and children and to share perspectives and best practices on the realization of the rights of indigenous women and children under the UN Declaration with respect to protection against all forms of violence and discrimination;*
2. *A decision to require that a UN body for monitoring and implementing the Declaration give particular attention, on at least an annual basis, "to the rights and special needs of indigenous . . . women, youth, and children . . . in the implementation of the UN Declaration;" and*
3. *A decision to appoint a Special Rapporteur to focus exclusively on human rights issues of indigenous women and children, including but not limited to violence against them and on changing state laws that discriminate against them.*

***Violence Against Indigenous Women and Girls is a Human Rights Crisis.*** Violence against women is discrimination and violates women's human rights.<sup>1</sup> An international policy and legal framework recognizes that states have an obligation to protect women from violence, hold perpetrators accountable, and provide justice and remedies to victims.<sup>2</sup> The UN Declaration offers opportunities to restore safety and access to justice to indigenous women and girls. Violence against indigenous women and girls is addressed in Article 22(1), which calls for "particular attention" to "be paid to the rights and special needs of indigenous . . . women" and children in implementing the Declaration. Article 22(2) goes on to call on states to "take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection . . . against all forms of violence and discrimination."

Indigenous women are especially likely to be targets for various forms of violence, including intimate partner violence, custodial violence by police, and murder, often at a much higher rate than non-indigenous women.<sup>3</sup> Because data on violence against indigenous women and girls is scant, international experts have called on countries to strengthen both their legal frameworks on the rights of women and their policies addressing violence against indigenous women and girls.<sup>4</sup> These experts also encourage "greater coordination among UN agencies, including with states and indigenous peoples, on the issue of violence against indigenous women and girls and the implementation of inter-agency programmes on these issues."<sup>5</sup>

***Take Action! Support the safety and human rights of indigenous women and children everywhere and at the World Conference. Please circulate these recommendations widely.***

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<sup>1</sup> United Nations Division for the Advancement of Women, *Background Paper for the Expert Group Meeting on Good Practices in Legislation on Violence Against Women*, U.N. Doc. EGM/GPLVAW/2008/BP.01 (May 2008), 3.

<sup>2</sup> United Nations General Assembly, Report of the Secretary General, *In-depth Study on All Forms of Violence Against Women*, U.N. Doc. A/61/122/Add.1 (2006), 12-17. See also UN Special Rapporteur on violence against women, its cause and consequences, Report on the Due Diligence Standard, E/CN.4/2006/61 (Jan. 2006).

<sup>3</sup> United Nations General Assembly, Report of the Secretary General, *In-depth Study on All Forms of Violence Against Women*, U.N. Doc. A/61/122/Add.1 (2006), ¶¶ 33, 148. For example, in the United States, American Indian and Alaska Native women are 2.5 times as likely to experience violent crimes and at least 2 times more likely to experience rape or sexual assault crimes, compared to all other races. See Greenfeld, L. A., & Smith, S. K., *American Indians and crime* [NCJ 173386], Washington, DC: US Department of Justice, Bureau of Justice Statistics (1999); Perry, S. W. *American Indians and crime: A BJS Statistical Profile, 1992-2002* [NCJ 203097] Washington, DC: US Department of Justice, Bureau of Justice Statistics (2004); Tjaden, P., & Thoennes, N., *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey* [NCJ 183781], Washington, DC: US Department of Justice, National Institute of Justice & the US Department of Health and Human Service, Centers for Disease Control and Prevention (2000).

<sup>4</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, *Combating Violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2012/6 (Feb. 2012), 13.

<sup>5</sup> United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, *Combating Violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2012/6 (Feb. 2012), 15; see also United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9 (Feb. 12, 2013).

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## **REGULARIZING INDIGENOUS PARTICIPATION IN THE UNITED NATIONS Proposed Recommendation for the World Conference on Indigenous Peoples**

May 2014

Indigenous peoples' governments deserve a regularized and permanent status in the United Nations that enables their full and effective participation in UN activities. Many indigenous peoples have their own governments, and all have the right of self-determination. Yet, the existing rules for indigenous peoples' participation in UN activities do not take into account the distinct character of indigenous peoples and governments. Many indigenous peoples and governments are prevented from participating in meetings of the UN that concern them, because they do not have consultative status as non-governmental organizations. Indeed, they are *not* non-governmental organizations, and frequently they do not qualify for non-governmental organization status.

The Expert Mechanism on the Rights of Indigenous Peoples has recognized that current UN processes “can prevent indigenous peoples’ governance bodies and institutions, including traditional indigenous Governments, indigenous parliaments, assemblies and councils, from participating in decision-making processes at the United Nations, as they are not always organized as non-governmental organizations.”<sup>1</sup> Indeed, indigenous peoples and their governments are often relegated to participating, if at all, through non-governmental organizations, civil society actors, or as parts of State delegations – precisely what indigenous peoples and governments are not.

The World Conference on Indigenous Peoples presents an historic opportunity to take action recognizing the value of indigenous peoples’ contributions to UN activities. There appears to be worldwide support amongst indigenous peoples for the position that action to enable their full and effective participation in UN activities is necessary. A large number of indigenous nations in North America has made the following recommendation:

*Recommends*, that the UN World Conference decide to create a distinct and appropriate status for Indigenous Peoples within the United Nations system in order to regularize and facilitate the participation of Indigenous Peoples in the work of the United Nations. Such a status within the UN system must give appropriate recognition to Indigenous Peoples represented by their own governments. The Permanent Forum on Indigenous Issues [or the Expert Mechanism on Rights of Indigenous

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<sup>1</sup> The Expert Mechanism on the Rights of Indigenous Peoples, *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its fourth session*, U.N. Doc. A/HRC/18/43 (Aug. 19, 2011).

Peoples], in consultation with States and Indigenous Peoples, should be given responsibility for elaborating a resolution on this matter for adoption by the General Assembly at the earliest possible time.

Similar recommendations have been made by, at least, the Alta Outcome Document, the Inuit and Sami Peoples in the Nuuk Arctic Declaration and by the Preparatory Meeting of America Latina y el Caribe.

The recommendation quoted above is consistent with the views and recommendations of various bodies of the UN, including the Expert Mechanism, the Human Rights Council, and the Third Committee of the General Assembly, and is consistent with a report of the Secretary-General. The Human Rights Council in 2009 requested the Expert Mechanism to produce a study on indigenous peoples and the right to participate in decision-making.<sup>2</sup> The Expert Mechanism recommended that the Council encourage the General Assembly to “adopt, as a matter of urgency, appropriate permanent measures to ensure that indigenous peoples’ governance bodies and institutions, including traditional indigenous Governments, indigenous parliaments, assemblies and councils, are able to participate at the United Nations as observers with, at a minimum, the same participatory rights as non-governmental organizations in consultative status with the Economic and Social Council.”<sup>3</sup>

At the Council’s request, the Secretary-General prepared a report on the issue, which recognized many functional advantages when indigenous peoples participate in UN processes, including the strengthening of cooperation between States and indigenous peoples.<sup>4</sup> In 2012, the report was submitted to the Third Committee of the General Assembly, which recommended the General Assembly consider the issue at its sixty-ninth session, in 2014, the time set for the World Conference on Indigenous Peoples.<sup>5</sup>

The purpose of the recommended new status is to make it possible for genuine, authentic indigenous governments and equivalent indigenous institutions to participate effectively as observers in UN meetings and processes on an on-going basis after proper accreditation. The process of accreditation must assure that indigenous government observers are in fact indigenous and are genuine, freely chosen representatives of the indigenous people or peoples they purport to represent. The process of accreditation should be adapted to the needs and characteristics of indigenous peoples in various parts of the world.

Among the various possible options for creating the new status, one possible approach would be for the General Assembly to create a committee or direct the Economic and Social Council to create a Committee on Indigenous Government Observers to be responsible for elaborating and publishing standards and procedures for

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<sup>2</sup> H.R.C. Res. 12/13, U.N. Doc. A/HRC/RES/12/13 (Oct. 12, 2009).

<sup>3</sup> The Expert Mechanism on the Rights of Indigenous Peoples, *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its fourth session*, U.N. Doc. A/HRC/18/43 (Aug. 19, 2011).

<sup>4</sup> The Secretary-General, *Report of the Secretary-General on Ways and means of promoting participation at the United Nations of indigenous peoples’ representatives on issues affecting them*, ¶ 13, U.N. Doc. A/HRC/21/24 (July 2, 2012).

<sup>5</sup> Third Committee, *Report of the Third Committee on the Rights of indigenous peoples*, ¶ 11, U.N. Doc. A/67/454 (Dec. 3, 2012).



accreditation. Mere self-identification should not be sufficient for accreditation. Rather, an applicant should provide documentary or other evidence of its identity as indigenous and of its status as an authentic government of the people or peoples concerned. No particular form or structure of government should be required, and all genuine, indigenous governing institutions should have an opportunity to apply and to demonstrate their qualification for accreditation. The Committee should consider evidence and views from all relevant sources. The Committee should be authorized to recommend to the General Assembly or, in the alternative, to ECOSOC, the accreditation of indigenous governments that meet the requirements. Indigenous peoples and governments should, of course, be consulted in the process of creating the standards and procedures for accreditation.

Accredited indigenous government observers should be permitted to attend meetings and participate in processes throughout the United Nations system. Indigenous government observers should be able to propose agenda items for meetings, submit written statements as official documents for meetings, and to make oral statements at meetings, all subject, of course, to reasonable rules for the conduct of meetings. Indigenous government observers, because they are governments, should have priority over NGOs for seating in meeting rooms and for making oral statements in meetings.

Naturally, these and other details concerning the new status for indigenous governments will need to be discussed and elaborated in consultation with indigenous peoples. The details suggested here are intended as proposals and are all open to discussion.

The issue of a new and appropriate status for indigenous governments has already been studied at length in the UN system, and the World Conference is an appropriate moment to enable indigenous peoples' full and effective participation in UN activities.

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## **Recommendation for Action by the World Conference to Protect Indigenous Peoples' Sacred and Cultural Places**

April 28, 2014

Indigenous peoples depend on their sacred lands and places for their identity and for the free exercise of their cultural, religious, and spiritual practices. International human rights law recognizes the rights of indigenous peoples to their sacred places and to their cultural, religious, and spiritual practices.<sup>1</sup> Yet, development projects and extractive industries, often with the support of states, frequently affect indigenous lands and desecrate indigenous sacred sites for political, economic, recreational or other interests. The World Conference on Indigenous Peoples is one significant opportunity to take action to promote respect for indigenous peoples' rights to their sacred and cultural sites, and to protect and prevent their sites from being desecrated, degraded, or destroyed.

Indigenous peoples' rights to continue to use, care for, and have access to their sacred spiritual and cultural sites must be given attention by the World Conference by deciding to take the actions recommended by many indigenous peoples:

*Recommends*, That the World Conference take priority action to protect indigenous peoples' rights to their religious and cultural sites, and recommends particularly that the World Conference request the Office of the High Commissioner for Human Rights, the Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the Rights of Indigenous Peoples, the UN Educational, Scientific and Cultural Organization, and the Permanent Forum on Indigenous Issues to gather and share relevant information and best practices, conduct expert meetings and interactive panels, prepare studies, issue reports, and make concrete recommendations for the implementation of indigenous peoples' right to maintain, protect, and have access in privacy to their religious and cultural sites and to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies. The recommended implementing and monitoring mechanism for the UN Declaration, when it is created, should also give priority attention to the protection of indigenous peoples' religious and cultural sites.

Similar recommendations have been made by other indigenous peoples and regions including, significantly, the recommendation expressed in the Alta Outcome Document.

A number of UN treaties, instruments, bodies, and specialized agencies have already recognized the need for increased protections for indigenous peoples' religious and cultural sites. The proposed recommendation calls for various actions to strengthen the enjoyment of rights

recognized in the UN Declaration on the Rights of Indigenous Peoples, realization of which is the key objective of the World Conference. Article 11 of the UN Declaration recognizes that much of what indigenous peoples hold sacred has been taken by states “without their free, prior and informed consent or in violation of their laws, traditions, and customs.” Together, Articles 11 and 12 of the UN Declaration provide that indigenous peoples have rights to their sacred places regardless of where they are located. This includes the right to practice, revitalize, maintain, protect, and develop their cultural, religious, and spiritual traditions, customs, and ceremonies, including private access to their religious and cultural sites, use and control of ceremonial objects, and repatriation of their human remains. Articles 24 and 25 further recognize indigenous peoples’ rights to maintain and strengthen their spiritual relationship with their traditionally owned or otherwise occupied lands and waters, including rights to their traditional medicines, plants, animals, and minerals.

UN Special Rapporteur Erica-Irene Daes proposed that states and international actors “respect and protect the special relationships that indigenous peoples have to lands, territories, and resources, particularly sacred sites, culturally significant areas, and uses of resources that are tied to indigenous cultures and religious practices”<sup>2</sup> and supported the objective that indigenous peoples be provided “traditional cultural and sacred sites” sufficient for their survival and well-being in resolving any indigenous land issues.<sup>3</sup>

Specialized agencies of the UN, including the World Bank and the International Finance Corporation also recognize the importance of indigenous sacred sites. The World Bank aims to ensure that development projects “foster [ ] full respect for [indigenous peoples’] dignity, human rights, and cultural uniqueness.”<sup>4</sup> And in its Performance Standard 7, the International Finance Corporation recognizes in pursuing projects that impact sacred sites and lands and natural resources of indigenous peoples, even those under traditional ownership or customary use, indigenous peoples’ free, prior, and informed consent is required.<sup>5</sup>

Importantly, the UN Educational, Scientific and Educational Organization (UNESCO) recognizes 981 World Heritage Sites, 759 of which are cultural sites.<sup>6</sup> But UNESCO alone cannot of course adequately protect indigenous peoples’ sacred religious and cultural sites. Existing instruments have largely been ineffective in protecting and promoting indigenous peoples’ rights to their sacred and cultural sites. The proposed recommendation to the World Conference would do more to protect indigenous sacred and cultural sites and promote the free exercise of their cultural, religious, and spiritual practices. Without such increased attention and urgent implementation, indigenous peoples’ sacred spiritual and cultural sites will continue to be threatened and in some instances destroyed forever.

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<sup>1</sup> *E.g.*, International Labour Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples, 27 June 1989, art. 14.

<sup>2</sup> UN Commission on Human Rights, Report on Indigenous peoples and their relationship to land, Final working paper by the Special Rapporteur, Mrs. Erica-Irene A. Daes, E/CN.4/Sub.2/2001/21, 41 (11 June 2001).

<sup>3</sup> *Id.* at 27.

<sup>4</sup> World Bank Operational Directive 4.20, “Indigenous Peoples,” para. 6, September 1991.

<sup>5</sup> See Expert Mechanism on the Rights of Indigenous Peoples’ Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, A/HRC/21/55, 20 (16 August 2012).

<sup>6</sup> World Heritage List, available at <http://whc.unesco.org/pg.cfm?cid=31&mode=table> (last accessed 27 March 2014).