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**United Nations Expert Mechanism on the Rights of Indigenous Peoples
9th session, July 11th – 15th, 2016**

Agenda Item 3: Follow-up to the World Conference on Indigenous Peoples including the review of the mandate of the Expert Mechanism

Intervention by the International Indian Treaty Council, presented by Andrea Carmen

Thank you Mr. Chairman.

Our comments on this important agenda item focus on the report of the Expert Workshop [A/HRC/32/26, May 10, 2016] which took place in Geneva April 4-5, 2015. Its stated purpose was to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples and to propose recommendations on how it can more effectively promote respect for the United Nations Declaration on the Rights of Indigenous Peoples, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration. We reiterate our position that the achievement of the ends of the Declaration can only be fulfilled through its full and effective implementation by States in partnership with Indigenous Peoples.

The International Indian Treaty Council (IITC) was involved in each step of the development of the EMRIP as the successor body to the UN Working Group on Indigenous Populations which was dissolved in the restructuring of the UN Human Rights system in 2006. We recall the challenges in establishing the EMRIP and recognize the resulting shortcomings of its current mandate and methods of work, although we join with others in commending the important work which has nevertheless been carried out by the EMRIP to date.

For example, the EMRIP's studies, advice and interpretations have contributed in substantive ways to the understandings of States, UN Bodies and Indigenous Peoples of the scope and significance of the UN Declarations' provisions as well as the shortfalls and ongoing challenges in their full implementation. As was noted during the EGM, these shortfalls most often result from a lack of information, awareness or political will by States, as well as in some cases, by UN bodies and processes, in particular UN multi-lateral environmental agreements and the UN development agenda.

A strengthened EMRIP mandate will support its more proactive role in assisting both States and UN processes to address and overcome these implementation gaps, which include, *inter alia* Article 18 on participation by Indigenous Peoples in decision-making which would affect our rights and Article 42 regarding full respect for and full application of the Declaration's provision by States, UN agencies and bodies.

We reiterate our call made during the EGM as reflected in paragraph 42 of the EGM report to ensure the ability of the EMRIP to engage formally in processes outside of the UN human rights system which directly impact the rights of Indigenous Peoples. Of particular concern to our organization are ongoing environmental treaty processes such as the Minamata Treaty on Mercury, the UN Chemicals Conventions, the UN Framework Convention on Climate Change as well as the UN Sustainable Development Goals, where Indigenous Peoples are still not afforded full and effective participation and have had to struggle, with mixed success, for our rights to be recognized and respected.

As the EGM report also underscored regarding the EMRIP's studies, there needs to be independence in the selection of topics, capacity to make specific recommendations to States in addition to offering advice, and most importantly, a process to monitor that including reporting by States and Indigenous

Peoples at the EMRIP, the UPR and at the Human Rights Council, as to how the EMRIP's recommendations have been implemented by sharing good practices as well as challenges and shortfalls.

IITC was also very glad to note the inclusion of our recommendation regarding a role for EMRIP in achieving the call by the World Conference on Indigenous Peoples in operative paragraph 27 for a new process on international repatriation of Indigenous Peoples' ceremonial items and ancestral remains. This is a key example of how the EMRIP under its new mandate will be able to bring Indigenous Peoples and States together to overcome obstacles to the full implementation of the UN Declaration, in this case Articles 11 and 12. This role will be particularly important in instances where successful resolution of specific cases has not been possible through direct negotiations between Indigenous Peoples and their sacred items are held without their free prior and informed consent.

Finally, we must point out an area of considerable concern which was proposed as a focus area for the improved EMRIP mandate by IITC and other participants in the EGM but which is not included in the report. Treaties, Agreements and Constructive Arrangements between States and Indigenous Peoples was an important focus of work and study for the UN Working Group on Indigenous Populations, the predecessor body to the EMRIP. The enforcement of Treaties as affirmed the UN Declaration Article 37 is the foundation of the legal and political relationship for many Indigenous Peoples with colonial States and their successors. Nevertheless, Treaties and Agreements and the rights they affirm currently have no home in the UN system. The report of the 3rd UN Seminar on Treaties held in Geneva in 2012 is posted on the web page of the OHCHR. But it still does not have a UN document number, leaving its status as an official UN report and the basis for future work in limbo.

This void on the international level is underscored by the adoption on June 15th of the American Declaration on the Rights of Indigenous Peoples by the Organization of America States General Assembly. Article 24 on Treaties Agreements and Constructive Arrangements affirms the full text of article 37 of the UN Declaration, but adds a reference to the "true spirit and intent" of Treaties as well as a call for international oversight as follows: "When disputes cannot be resolved between the parties in relation to such treaties, agreements and other constructive arrangements, these shall be submitted to competent bodies, including regional and international bodies, by the States or indigenous peoples concerned."

At this time, such competent bodies focused on redress of disputes regarding Treaty violations do not exist on the international level. It is our view that the EMRIP can and should promote such a development through a stated commitment to advance and continue the work of the WGIP on Treaties, Agreements and Constructive Arrangements.

In closing Mr. Chair, we call upon the UN system and States to ensure that the EMRIP's strengthened and improved mandate is supported with the required additional resources. We look forward to a strong, forward looking resolution to be adopted at the Human Rights Council in September so that the strengthened mandate can be implemented at its 10th session in 2017 to coincide with the 10th anniversary of the adoption of the UN Declaration by the UN General Assembly.

Thank you, for all our relations.