

Draft two of the compilation of views on enabling Indigenous peoples' participation in the UN: it will be subject to ongoing consultation until June 2016.

Compilation of views on possible measures necessary to enable the participation of indigenous peoples' representatives and institutions in relevant United Nations meetings on issues affecting them, and of good practices within the United Nations regarding indigenous peoples' participation, to form the basis for a draft text to be finalized and adopted by the General Assembly at its seventy-first session

DRAFT TWO

16 May 2016

I BACKGROUND

At the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples Member States committed to consider *ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them* (A/RES/69/2, paragraph 33) and requested the Secretary-General to report to the General Assembly and give specific proposals to enable the participation of indigenous peoples' representatives and institutions, building on the report of the Secretary-General on ways and means of promoting participation at the United Nations of indigenous peoples' representatives on the issues affecting them (A/RES/69/2, paragraph 40).

In his report on *Progress made in the implementation of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples* (A/70/84-E/2015/76), the Secretary-General made concrete proposals on enabling the participation at the United Nations of indigenous peoples' representatives and institutions. He also reiterated a series of considerations for the participation of Indigenous peoples' representatives in the United Nations, namely:

- Procedures that will make the participation of Indigenous peoples' representatives meaningful and effective.
- Criteria for determining the eligibility of Indigenous peoples' representatives for accreditation as such;
- Nature and membership of the body to determine the eligibility of Indigenous peoples' representatives for accreditation;
- Details of the process, including the information required to be submitted to obtain accreditation as an Indigenous peoples' representative;

These considerations, together with the other background documents included on <https://www.un.org/development/desa/indigenouspeoples/participation-of-indigenous-peoples-at-the-united-nations.html>, have guided the consultations in March-May 2016 conducted by the advisers to the President of the General Assembly (see below). This draft compilation is primarily based on the submissions to the electronic consultation and contributions during the face-to-face consultation on 11 May 2016.

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II CONSULTATIONS

The General Assembly under Resolution 70/232 of 23 December 2015:

Requests the President of the General Assembly to conduct, within existing resources, timely, inclusive, representative and transparent consultations with Member States, indigenous peoples' representatives and institutions from all regions of the world, and existing relevant mechanisms of the United Nations, on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, and also requests the President to prepare a compilation of the views presented during the consultations, including good practices within the United Nations regarding indigenous peoples' participation, which will form the basis for a draft text to be finalized and adopted by the Assembly during its seventy-first session.

The President of the General Assembly appointed in February 2016 four advisors to assist him in fulfilling his mandate with respect to consultation and the compilation of views with respect to Indigenous peoples' participation at the UN.

The President of the General Assembly launched the consultation process with an electronic consultation on 7 March 2016. The first face-to-face consultation occurred on 11 May 2016. This compilation reflects the responses provided to the President of the General Assembly to the electronic consultation and during the face-to-face consultation on 11 May 2016. It also provides a preliminary outline of good practices within the UN regarding Indigenous peoples' participation. This compilation will be refined as a result of further contributions to the ongoing consultations on Indigenous peoples' participation at the UN conducted by the President of the General Assembly and his advisors up until 30 June 2016.

III SUMMARY OF CONTRIBUTIONS

In this second draft, we provide a general overview of responses and proposals on the ways forward. As the consultations continue in June, some of the more detailed proposals provided could be used for further elaboration.

The attached discussion paper (see addendum) summarises the views that seem to have a significant amount of support as well as some of the points of difference at this stage of the process.

A Converging views

The responses to the electronic consultation process revealed converging views on the following issues:

- There should be enhanced participation by Indigenous peoples in meetings of relevant United Nations bodies on issues affecting them;
- Existing procedures within the United Nations do not adequately enable Indigenous peoples to be represented in relevant United Nations bodies;
- Indigenous peoples are not non-governmental organisations and a new category for participation should be considered;
- Existing procedures that enable Indigenous peoples' participation in the UN, including in the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous

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Peoples, should not be undermined by efforts to enhance Indigenous participation in the broader UN system;

- Where Indigenous peoples have participated in UN processes, their contributions have been positive;
- On selection criteria:
 - The focus should be on Indigenous governing institutions that represent Indigenous peoples.
 - Self-identification is an important criterion.
 - State recognition could be a factor, but not the deciding factor.
 - The process must provide for some flexibility in determining who is eligible for enhanced participation at the UN.

B Suggested forms of participation:

Most responses have indicated the need for enhanced forms of participation for Indigenous peoples in UN mechanisms affecting them, although some responses have expressed concerns about or opposition to moving in that direction. There was greatest support expressed for a separate observer status for Indigenous peoples as the current procedures and practices do not naturally or sufficiently accommodate Indigenous peoples. One view, however, was that Indigenous peoples are not states and thus should not be accorded observers status akin to that accorded observer states in the General Assembly. Additionally, it was expressed that Indigenous peoples should not be included in drafting negotiations on resolutions in the General Assembly context.

The responses favoring enhanced participation provided various suggestions, including the following:

- Participation with the same rights as the vast majority of current holders of observer status in the General Assembly.
- Co-facilitation of consultations and negotiations specifically focused on Indigenous peoples' issues such as the World Conference on Indigenous Issues and this current process on Indigenous peoples' participation at the United Nations.
- Consultation with groups of representatives of Indigenous peoples.
- Independent participation in relevant UN mechanisms and processes.
- Utilizing existing mechanisms in developing methods to enhance Indigenous peoples' participation at the UN.
- At a very minimum, participation in a manner comparable to non-governing organisations in consultative status with the Economic and Social Council, which would include attending meetings, submitting written statements, making oral statements, including during consultations on draft resolutions, and proposing agenda items. Indigenous peoples' governing institutions should have priority over non-governmental organisations with respect to seating and order of speaking and should enjoy relaxed limitations and rules on the length of their oral statements and written submissions.
- Ad hoc mechanisms for participation in specific bodies, noting that the UN has established procedures to enable civil society to contribute to the work of the UN and there is a mechanism for accreditation of non-governmental organisations.

Additionally, the following recommendations appeared among the responses:

- Drawing from positive practices, such as the accommodation of contributions by national human rights institutions in the sessions of the Human Rights Council, similar means of participation should be considered.

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- The new procedures would be aimed at enabling indigenous representatives to attend selected UN sessions; submit written input; and make oral statements in accordance with rules of procedure (nb: with participation limited to some UN bodies).
- In refining the new participation procedures, we should avoid changes that would make UN sessions cumbersome, inefficient, or cost-prohibitive, including by adding unwieldy numbers of participants or cumbersome procedures to UN meetings; it is not feasible or practical for every indigenous group/nation to have a separate representative given the number of Indigenous peoples groups and nations globally.
- Indigenous peoples' representation cannot be limited to participation on a regional basis, which would not be practical and would not be in line with the principles of the Declaration on the Rights of Indigenous Peoples.
- If the new participation procedures are found to meaningfully improve indigenous peoples' participation in selected meetings, consideration could be given to expanding them to other UN bodies and meetings.
- Participation should be similar to that of most permanent observers in the General Assembly.
- The forms of participation might be different in the various UN institutions.
- Indigenous peoples' ability to make oral statements should not pre-empt Member States' speaking role, and reasonable parameters will need to be found to avoid adding unwieldy numbers of speakers to already lengthy speaking lists.

We especially note the call by the Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples (June 2013, Alta, Norway) for permanent observer status for Indigenous peoples enabling Indigenous peoples' direct participation through their own governments and parliaments as well as traditional councils and authorities (Theme 2: OP 10). This call is reflected in the conclusion by the Secretary General in his report *Progress made in the implementation of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples* (A/70/84–E/2015/76) that “some indigenous peoples put forward a proposal for the creation of a new category of observer status that would allow indigenous peoples' representative institutions to participate more effectively in the United Nations.” (paragraph 42).

We also note that Indigenous peoples' submissions to the 2015 Secretary General questionnaire recommended that Indigenous peoples have:

- the right to inscribe on the list of speakers under agenda items at relevant meetings;
- the right to make interventions, including during consultations on draft resolutions;
- the right to propose agenda items;
- the right to submit documents and communications relating to the work of the General Assembly; and
- adequate seating arrangements for indigenous peoples at the relevant meetings.

C Relevant UN venues for enhanced participation

In the responses many different views were expressed. The most common view was that Indigenous peoples' representatives and institutions should be allowed to participate in all meetings of relevant UN bodies on issues affecting them. The following additional or related suggestions were made:

- Indigenous peoples' representatives, organisations and institutions must be able to exercise their right to participation in meetings of all relevant UN bodies on issues affecting them, including the General Assembly, and not limited to ECOSOC and its subsidiary bodies only.
- Participation should extend to all bodies of the UN, including the General Assembly.

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- Participation should be extended to all relevant UN meetings and bodies, and not just Indigenous specific mechanisms such as the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues. Such bodies would include those with direct implications for Indigenous interests such as the Economic and Social Council and its subsidiary bodies, including the Commission on the Status of Women, the Commission on Social Development and so on; the Human Rights Council and its subsidiary bodies; the treaty bodies; and relevant meetings of the General Assembly and its main committees. This list is not exhaustive.
- Indigenous peoples' observers should have the right to participate in all UN bodies which Indigenous peoples judge to affect their interests.
- There was also a proposal to initially consider new participation procedures for selected UN bodies rather than the entire UN. These could include the Permanent Forum on Indigenous Issues (PFII), Expert Mechanism on the Rights of Indigenous Peoples, ECOSOC and its subsidiary bodies, and the Human Rights Council.
- There could be greater efforts to inform Indigenous people about existing possibilities to participate in the UN including via information technologies. The current forms of participation are sufficient.
- It is essential to include meetings that deal with women's empowerment and gender equality to ensure and promote the participation of Indigenous women in decision making.
- Indigenous peoples should have the right to participate in all UN programmes, funds and specialized agencies.
- Indigenous peoples should have the right to participate in relevant conferences of the parties to specific UN treaties.

D Procedure to grant status under a new category of participation

One proposal is for a process involving, first, adoption of a general resolution in which the General Assembly decides that Indigenous peoples' institutions that meet the specified criteria are eligible to request observer status. Individual requests for observer status would then be considered on an individual basis in the light of the criteria set out in the overall General Assembly resolution (with options for this second process outlined below).

E Body to oversee accreditation

Most proposals recommended a new body to accredit indigenous peoples for a new status or category of participation. Suggestion in this regard included that it would consist of both Indigenous peoples representatives and Member States or, at a minimum, a procedure that includes consultation with Indigenous peoples. Other or related suggestions included:

- A new independent body e.g., a working group under the General Assembly should be established and assigned the responsibility of considering requests from Indigenous peoples' institutions for granting observer status:
 - The working group should be composed of equal numbers of Member States and Indigenous peoples' representatives appointed by the General Assembly.
 - The working group could be mandated to make the final decision on requests for observer status or, *alternatively*, the working group's mandate could be limited to providing a recommendation to the General Assembly, through the President of the Assembly. In this situation, the final decision on whether an individual organization should be granted observer status rests with the General Assembly
- A new body to accredit indigenous peoples should be composed of independent experts

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- Representatives of Indigenous peoples' government and/or treaty organisations should rotate membership in a body to determine the eligibility of Indigenous peoples' representatives.
- The UN body determining Indigenous participation should be balanced by geographic area and gender representation.
- The eligibility body should be developed with feedback mechanisms for Indigenous peoples and Indigenous organizations in place to modify the composition of the body as needed by Indigenous peoples to maximize the efficacy of indigenous participation and should be free to develop an advisory body from among Indigenous organisations.
- The creation of a new and independent body comprised of Indigenous peoples and Member States should be considered to ensure specific focus and competence on eligibility of Indigenous peoples e.g., under the General Assembly. The new body should work independently and be provided with the necessary resources to function adequately.
- It was also noted that selection should be carried out by a new or existing committee or working group with any committee or working group including Indigenous government leaders or consultation with Indigenous government leaders:
 - There is precedent to a separate accreditation process and body with respect to national human rights institutions.
 - One option is a consultative group encompassing different indigenous groups with the region supporting each of the regional representatives.
 - Any accrediting body should include representation from Indigenous peoples from around the globe.
- To determine eligibility, a hybrid committee could be created consisting of member state representatives and Indigenous representatives, the respective numbers of which would need to be determined. The PFII Secretariat may be helpful in supporting the selection process. Its involvement with the PFII accreditation process, working with the UN Division of Social Policy and Development's Civil Society and Outreach Unit, gives it expertise that should prove useful in vetting applications. It would need to be determined whether the PFII Secretariat would require additional resources to assist with this function.
- The accreditation of Indigenous peoples' institutions under the new arrangement should be separate and independent from any existing UN bodies or mechanisms. The Expert Mechanism on the Rights of Indigenous Peoples and the PFII are both advisory expert bodies dealing with thematic issues, and thus not appropriate bodies to consider representation of Indigenous peoples.
- Representatives should be selected by a vote for a period of one year from among the delegates at the annual session of the PFII to attend the meetings of the relevant United Nations committees.
- Any process of accreditation of Indigenous peoples should not replicate colonial practices that have served to disadvantage indigenous peoples and exclude them from processes that affect them or diminish their status as self-determining nations.
- States should have the final authority to determine eligibility including through the "non-objection" basis.
- The body must only determine the eligibility of the Indigenous peoples' institution rather than the status of any group as an Indigenous people or not.

The Secretary General report, *Progress made in the implementation of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (A/70/84–E/2015/76)* records that several proposals were put forward "ranging from a hybrid committee of member states and indigenous peoples to consider applications to the formation of a working group of the General Assembly."

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F Additional relevant factors for Indigenous peoples' representative institutions to qualify for a new category of participation

The most common submissions are reflected above under heading III A. Additional or related suggestions included the following:

- There needs to be a clear distinction between non-governmental organisations and Indigenous self-governing institutions, as well as voluntary Indigenous organisations.
- There should be a two-step approach that first considers whether the group or people is an Indigenous people and then, second, considers whether the specific Indigenous institution concerned is eligible for such status. It would be up to the Indigenous people or organization to designate its own representatives in accordance with their own procedures, but the said representatives should have appropriate credentials from those organizations/peoples that they represent.
- Indigenous institutions and representatives should be chosen by Indigenous peoples themselves.
- Each Member State should initiate dialogue processes with Indigenous peoples that have ancestral lands in order to establish relations, identify clear and indisputable representatives of indigenous peoples and prevent false representation by individuals, networks and non-governmental organizations.
- Indigenous representatives must be independent from the state.
- If it is decided that representation will be on a regional level, the representative must speak for all groups within that region.
- How representatives are chosen should reflect the different representative approaches of different groups – whether, for example, by election, by authority, or by consensus. If representation is on a regional level, the most appropriate approach should be determined within that region.
- Indigenous peoples' organisations and representatives must be genuine and based in the land and territories of Indigenous peoples and should have the requisite proof of this.
- Representatives of indigenous peoples should have a genuine attachment to the peoples they represent, relevant experience beyond desk experience, adequate knowledge and information, and involvement in public policy matters concerning indigenous peoples.
- It was noted that this process should focus on the enhancement of the participation of Indigenous governing institutions only, given that voluntary Indigenous organisations have sufficient representation with the UN at present.
- Indigenous governing institutions need to be recognized by their own Indigenous constituents as such.
- Evidence of governance authority should be provided.
- State recognition should only be a consideration for accreditation but must not be a necessary criterion.
- Participation should extend to Indigenous communities from non-member states but resident in other member states.
- Indigenous peoples themselves should determine the criteria for their representation.
- Indigenous peoples' record of commitment to peace and human rights should be relevant.
- Criteria should be such as to include all Indigenous self-governing institutions, including governments, parliaments, traditional councils and authorities, and flexible to respond to the differences among indigenous governing institutions in the various regions of the world.
- New permanent accreditation procedures should be without prejudice to those Indigenous peoples' organisations that are organized and/or accredited as non-governmental organisations under relevant ECOSOC rules.

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- Indigenous peoples' representatives and institutions that are constitutionally, legally and/or politically acknowledged should have the right to participate in meetings of relevant UN bodies on issues affecting them.
- Recognition of Indigenous peoples as eligible for participation at the UN should not be confined to those groups and peoples recognized by the state as Indigenous peoples.
- Self-identification should be given great weight as well as recognition by other indigenous peoples.
- Enhanced participation should be accorded representatives of Indigenous peoples recognized under domestic law as well as for other Indigenous groups as appropriate, taking into account the diversity of legal arrangements for the recognition of Indigenous peoples in various countries.
- In practice the application process of Indigenous peoples to the United Nations could consist of a questionnaire requesting pertinent information from an Indigenous entity. The criteria for the new participation procedures should be more selective than those currently used to determine PFII participation. It was noted in many responses that the criteria should not be so broad as to accommodate all those who self-identify as Indigenous persons without satisfying additional factors, such as a shared history, language, or culture with a group. Questions could include:
 - What is the relationship between the indigenous representative and the indigenous people? Is the indigenous representative an elected or traditional leader of an indigenous people? Is the indigenous representative authorized by the indigenous people to speak at the UN on its behalf? Has the Indigenous people established a government-to-government relationship with the central government or a sub-national government in the state? Such information would indicate whether the person has a constituency that accepts him or her as a leader.
 - What are the membership size, governance structure, and programs and activities of the Indigenous people?
 - Does the Indigenous people have a shared history, language, or culture?
- It was noted that the criteria for accreditation of Indigenous peoples at meetings of the Expert Mechanism on the Rights of Indigenous Peoples, the PFII and the Human Rights Council could be more transparent.
- Indigenous institutions must represent or be conduits for exercising the collective rights of Indigenous peoples including by maintaining their spiritual relationships with lands, territories and resources and exercising autonomy and self-determination.
- Indigenous institutions that represent a people that entered into treaties, agreements or other constructive arrangements should be included.
- There is a need to balance self-identification with state recognition.
- There should be an understanding about the general criteria for identifying which groups are indigenous peoples.
- Indigenous governments should be accredited if they demonstrate that: (1) they represent a people; (2) the people is indigenous; and (3) the government is duly established by the people.

G Comments on resources with respect to enhanced participation

- Funding is required for Indigenous peoples' participation at the UN.
- Funding is required to enable Indigenous peoples' representatives to communicate with their peoples.
- The budgetary implications of enhanced participation need to be considered.

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H More general proposals

- Mechanisms should be put in place to reach out with information and to include in UN processes Indigenous peoples in remote places with limited internet access or resources to otherwise participate.
- The PGA should recommend that those states that already have advanced processes of dialogue and public policy in line with international standards, should share their experiences with states that are beginning such processes with indigenous peoples
- It is important to include Indigenous women in the processes of governance, policy making and processes within the UN

IV EXISTING PRACTICES WITHIN THE UNITED NATIONS REGARDING PARTICIPATION OF NON-MEMBER STATES, INTERGOVERNMENTAL ORGANIZATIONS, NON-GOVERNMENTAL ORGANIZATIONS AND OTHER ENTITIES

A Observer status at the General Assembly

The General Assembly may determine its own rules with respect to the granting of observer status. In accordance with current practice of the General Assembly, in line with General Assembly decision 49/426 of 9 December 1994:

The granting of observer status in the General Assembly should in future be confined to States and to those intergovernmental organisations whose activities cover matters of interest to the Assembly.

and under General Assembly resolution 54/195 of 17 December 1999:

In future, any request by an organization for the granting of observer status in the General Assembly will be considered in plenary session after the consideration of the issue by the Sixth Committee of the General Assembly;

Requests the Secretary-General to take appropriate measures to bring to the attention of all the States Members of the General Committee of the General Assembly the criteria and procedures laid down by the General Assembly whenever a request is made by an organization seeking observer status in the General Assembly.

UN document A/INF/70/5 provides a list of non-Member States, entities and organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly. The specific rights of each observer with respect to their participation e.g. rights to speak, co-sponsor resolutions, to raise points of order etc., is determined either by the specific resolution conferring observer status to the observer or by current practice of the General Assembly. There are some intergovernmental organizations, such as specialized agencies and related organizations that participate at the General Assembly as observers through an agreement between the UN and the organization.

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B ECOSOC and Human Rights Council accreditation

As is detailed in the Secretary-General report *Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them* (A/HRC/21/24) (2012), there are specific rules regulating the participation of non-governmental organizations (Economic and Social Council resolution 1996/31) under the Economic and Social Council, which have been adopted by the Human Rights Council.

There are also unique participation rules and specific accreditation procedures for national human rights institutions in the Human Rights Council that are, notably, independent of states (including Human Rights Council resolution 5/1 and Commission on Human Rights resolution 2005/74 as well as General Assembly resolution 65/281 Review of the Human Rights Council and its annex).

C Ad hoc participation in specific UN committees, meetings etc.

Additionally specific modalities to enable civil society participation are set out in specific resolutions relating to specific committees, meetings and conferences associated with the General Assembly, including, by way of example General Assembly resolution 66/296 on the Organization of the high-level plenary meeting of the sixty-ninth session of the General Assembly, to be known as the World Conference on Indigenous Peoples. Another example is the General Assembly resolution on the format and organizational aspects of the high-level forum on sustainable development (A/Res/67/290).

V UNIQUE EXISTING PROCEDURES TO FACILITATE PARTICIPATION BY INDIGENOUS PEOPLES IN THE UN

- Procedures to enable Indigenous participation in the PFII and the Expert Mechanism on the Rights of Indigenous Peoples (see Secretary-General report *Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them* (A/HRC/21/24) (2012)). Member states and Indigenous peoples both attend as observers in meetings of the Expert Mechanism on the Rights of Indigenous Peoples.
- Procedures that permit the appointment of Indigenous co-facilitators or advisers in processes that directly address Indigenous peoples such as in the World Conference on Indigenous Peoples and in this current process led by the President of the General Assembly.
- Practices that support Indigenous peoples' participation in various UN bodies as set out in the Inter-Agency Support Group on Indigenous Peoples' Issues *The Participation of Indigenous Peoples in the United Nations* (June 2014).