

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

8 July 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-June 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 consultations on 11 May 2016, 18 May 2016 and 30 June 2016 in New York.

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. The second face-to-face consultation was held on 18 May 2016. The third and final face-to-face consultation was held on 30 June 2016. The advisors also held meetings with the Special Rapporteur on the Rights of Indigenous Peoples, the Chair of the Expert Mechanism on the Rights of Indigenous Peoples, members of the Permanent Forum on Indigenous Issues as well as interested delegations of Member States and Indigenous peoples. This compilation reflects the responses provided to the President of the General Assembly at the consultations and meetings. It also provides a preliminary outline of good practices within the UN regarding Indigenous peoples' participation.

III SUMMARY OF CONTRIBUTIONS

In the first and second drafts of the compilation the advisors attempted to summarise in a comprehensive way all of the views expressed. In the third and this final draft, to constructively present a balanced compilation, we attempt to summarise the various views that appear to have some support while also noting points of difference at this stage in the process. We also, where appropriate, offer some further thoughts on outstanding questions that all parties might like to continue to reflect upon in more depth and on the legal and procedural parameters that regulate the process to enhance Indigenous peoples' participation at the UN.

Some delegations referred to the need for the Declaration on the Rights of Indigenous Peoples to guide the proposals to enhance Indigenous peoples' participation at the UN including articles 3, 5, 18, 19, 20, 32, 33, 41 and 42

A Suggested venues of participation:

While noting the status and territorial integrity of States as set out in the Charter of the United Nations as well as in article 46 of the UN Declaration on the Rights of Indigenous Peoples, most responses have in principle indicated the need for enhanced forms of participation for Indigenous peoples in UN bodies affecting them although some responses have expressed concerns about moving in that direction.

Some noted the affirmation of Indigenous peoples' right to self-determination as reflected in the Declaration on the Rights of Indigenous Peoples as well as other articles in the Declaration setting out Indigenous peoples' rights to participate in processes that impact on them.

There was considerable (but not uniform) support expressed for a separate category of participation in the UN, including in the General Assembly, for Indigenous peoples as the current procedures and practices such as those applicable to ECOSOC-accredited non-governmental organisation do not

naturally or sufficiently accommodate the participation of Indigenous peoples as Indigenous peoples in UN bodies.

There appears to be a convergence of views among those responding that, at a minimum, Indigenous peoples' participation at the UN should not fall below that of ECOSOC-accredited non-governmental organisations and, further, should not in anyway undermine existing unique procedures permitting the participation of Indigenous peoples' organisations in the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.

Participation in the General Assembly remains centred on Member States of the United Nations as well as, albeit to a lesser degrees, non-Member States and entities and organisations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly. Not all organisations having received an invitation to participate as observers in the General Assembly are inter-governmental organisations. There is not one singular resolution setting out the forms of participation for observers in the General Assembly. The specific forms of participation by the individual observers are regulated by organization-specific General Assembly resolutions and decisions and the rules and practices of the General Assembly.

Some mentioned General Assembly decision 49/426 of 1994, which states that the "granting of observer status in the General Assembly should be confined to States and to those intergovernmental organisations whose activities cover matters of interest to the Assembly". Others noted that in practice a few entities that are not inter-governmental organisations have received, by resolution, a standing invitation to participate as observers in the General Assembly. Moreover, others again have stressed that the focus in this process is on the establishment of a new and unique category for Indigenous peoples' participation in the General Assembly. Advice received indicates that the General Assembly has the authority to do so.

Some states stressed the need for coherence and consistency in treatment of non-state actors and their rights to participate in the UN as well as how a new category might impact on the participation of Indigenous groups and/or NGOs in the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. Another view was expressed that it is potentially discriminatory to exclude Indigenous peoples from an invitation to observe the General Assembly when other non-state actors have an invitation to observe the General Assembly.

Another view was that Indigenous peoples are not states and thus should not be accorded a so-called "permanent observer status", which is similar to the view that the intergovernmental nature of the UN, and in particular participation in the General Assembly, should be maintained.

Some expressed concern about potential practical implications of enlarging the General Assembly to include Indigenous peoples' organisations' observers although others noted that this should not be an obstacle to enhancing Indigenous peoples' participation and can be addressed practically. Some suggested that these issues can be managed just as the participation of non-state-actors is managed in, for example, the ECOSOC and Human Rights Council and their respective subsidiary bodies. For example, spaces for Indigenous peoples' speaking in the General Assembly might be managed by procedures setting out specific times and a set number of speaking spots for accredited observer Indigenous peoples' organisations. These speaking slots might be, under one suggestion, allotted by regions (understood from an Indigenous-regions viewpoint). In this way observer Indigenous peoples' organisations would not be limited in number but, in the interests of the efficient organization of General Assembly meetings, speaking opportunities might be.

Some are of the view that mechanisms to enable unique forms of participation for Indigenous peoples should be first established in only some UN bodies such as the ECOSOC, the Human Rights Council and their subsidiary bodies.

Another view was that more research was required into how Indigenous peoples use existing opportunities to participate in UN and that more information should be provided about already existing opportunities. Moreover, the view was expressed that perhaps it might be appropriate to first consider how the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples might be strengthened.

Many mentioned the need for Indigenous peoples' guaranteed participation in all UN programmes, funds and specialized agencies as well as in conferences in the parties to UN treaties. Advice received suggests that the General Assembly does not have the authority to require Indigenous peoples' participation in all activities or entities associated with the UN.

Moreover, generally the General Assembly does not determine procedures for participation in the ECOSOC. For the Human Rights Council it has done so in resolution A/RES/60/251 establishing the Council; the rules for participation of observers of the Council were subsequently confirmed by the Human Rights Council itself in its rules of procedures. However, the General Assembly may recommend that the UN as a whole, including all associated entities and processes, enhance participation of Indigenous peoples and it is anticipated that such a recommendation would be influential. There was considerable support expressed for such a General Assembly recommendation.

It was also noted that there is a relationship between the rules and procedures regulating Indigenous peoples' participation and the appropriate venues for Indigenous participation and forms of participation. In other words, the view was expressed that the clearer and stricter the rules and procedures to accredit Indigenous peoples' institutions the more likely there would be agreement on enhanced levels of Indigenous institutions' participation in the higher-level UN bodies such as the General Assembly.

Some are of the view that almost all issues addressed in the UN affect Indigenous peoples. Many also maintain that Indigenous peoples' representative institutions and organisations should have the right to participate in all UN bodies which Indigenous peoples themselves judge to affect their interests.

Some expressed the need to ensure that Indigenous peoples' representative institutions from all regions have in practice and in principle the same rights and capacity to participate in the UN.

B Participation modalities

Some are of the view that the specific forms of Indigenous participation in the General Assembly should be consistent with those of the vast majority of current holders of observer status in the General Assembly, namely inter-governmental and other organisations. This would include, for example, the right to speak, but not the right to reply, the right to take initiatives or the right to vote. Others referred to the need for adequate seating and access to documents for Indigenous peoples' representative institutions.

Specific times and a set number of speaking spots for accredited observer Indigenous peoples' institutions could be created.

Additionally, it was expressed that Indigenous peoples should not be included in formal meetings for drafting negotiations on resolutions in the General Assembly context. The contrary view was also

expressed; that Indigenous peoples should be including in resolution drafting and negotiation sessions in all relevant bodies of the UN.

At the same time, some are of the view that Indigenous peoples' participation in ECOSOC and its subsidiary bodies and the Human Rights Council and its subsidiary bodies should be improved and might be greater than in the General Assembly, for example, with respect to opportunities to speak and disseminate written material.

The view was expressed that Indigenous peoples' institutions should not take priority over ECOSOC-accredited non-governmental organisations in speaking order or seating arrangements in the ECOSOC or Human Rights Council. Others maintain the contrary, i.e., that Indigenous representative institutions should be afforded some priority as representatives of peoples when issues especially relevant to Indigenous peoples are addressed.

However, there appears to be a convergence of views among those responding that, at a minimum, Indigenous peoples' modalities of participation at the UN should not fall below that of ECOSOC-accredited non-governmental organisations.

C Method of selection/ recognition (accreditation)

Most proposals recommended the establishment of a new body to recognize and accredit Indigenous peoples' representative institutions as eligible for a new category of participation. Suggestions in this regard included that the new body would consist of both Indigenous peoples representatives and states or, alternatively, Indigenous and state appointed independent experts. Independent experts might be appointed using the method currently employed to select members of the Permanent Forum on Indigenous Issues.

Some suggested that the Permanent Forum on Indigenous Peoples experts might be mandated to oversee accreditation while others maintain that any new arrangement should be separate from any existing UN bodies or mechanisms, in part to allow the Permanent Forum to focus on its existing mandate. Another suggested that the accreditation process include both a domestic accreditation council and an international accreditation council with both being composed of both Indigenous and State appointees of representatives. There was a further suggestion that, to qualify as an Indigenous peoples' representative institution, state approval must first be obtained.

Conversely, some rejected the establishment of any body external to Indigenous peoples for accreditation. On the other hand, some suggested that the accreditation body be composed of mainly states and/or the use of a "non-objection" procedure. Conversely, there was also some opposition expressed to the use of a "non-objection" procedure. Another suggestion was that there be a two-step process with recommendations from a new Indigenous accreditation body being reviewed by the General Assembly with the final decision resting with the General Assembly.

Another suggestion focused on enhancing existing accreditation procedures for bodies such as the Permanent Forum on Indigenous Peoples instead of establishing a new accreditation body.

A number of contributors recommended that membership on the new accrediting body be balanced by geographic area – including equality in membership of individuals from the global North and global South - and gender representation.

There was some discussion, albeit largely inconclusive at this point, on whether any accreditation body should be established under the ECOSOC or the General Assembly.

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

There appears to be a convergence of views that qualification for a new category of participation should center on Indigenous peoples' representative institutions. Some are of the view that such institutions should be limited to Indigenous governance institutions while others express that such representative institutions should be understood broadly and flexibly to include different types of organizational structures.

Some propose that a definition of Indigenous peoples' representative institutions is required, with one state citing ILO Convention No 169 criteria, while others disagree with any attempt to define Indigenous peoples or their institutions in any way. Others suggest that, instead of a definition, there might be factors to be taken into account in a flexible manner.

There is also the suggestion that if the process and criteria for accreditation are clearer then there might be a greater willingness to enhance Indigenous peoples' participation in the UN including in the higher echelons. On the other hand, there is a suggestion that if states have a greater or final say in determining accreditation, there is less of a requirement for a definition.

Many Indigenous peoples have multiple representative institutions within and across states and regions. There are often layers of representation that include local, regional, state and international levels.

There appears to be considerable agreement that Indigenous peoples and their representative institutions need to be distinguished from non-governing organisations, organisations composed of Indigenous voluntary members or non-Indigenous peoples' organisations. The point was made that it would undermine Indigenous peoples' governing institutions if other types of Indigenous organisations were entitled to the same category of participation. The point was made that an institution should not be eligible to qualify as both an ECOSOC accredited NGO and an Indigenous peoples' representative institution.

On the other hand, questions remain as to whether, for example, Indigenous women's organisations or organisations representing Indigenous individuals who are not resident on Indigenous territories should qualify for a new category of participation as an Indigenous peoples' representative institution. Some maintain that global Indigenous peoples' institutions such as Indigenous women and youth organisations should be eligible for enhanced participation in the UN system.

There remains a need for clarity around the type of institution that should be eligible for accreditation. Some maintain that it should be confined to governance institutions, including governing councils, parliaments, and traditional authorities, while others claim that not all Indigenous peoples' representative institutions can be accurately described as governing, in some cases because of the impact of colonization and/or dispossession, and should not be denied eligibility as a result. Some maintain that eligibility should extend to organisations that represent more than one Indigenous people. Others are concerned to ensure that eligibility does not extend to Indigenous organisations that may be able to apply for ECOSOC accreditation as non-governing organisations but that do not actually represent Indigenous peoples. Another expressed the view that one Indigenous people might be represented by more than one Indigenous peoples' representative institution and that there should be flexibility in accommodating multiple forms of Indigenous peoples' organizational structures.

There is considerable support for the view that state recognition of an organization as representative of an Indigenous people, although a relevant factor, should not be a prerequisite for eligibility for

accreditation as an Indigenous peoples' representative institution. Many took the view that a necessary factor for qualifying as an Indigenous peoples' representative institution is that they genuinely represent one or more people/s that self-identifies as Indigenous. Other factors cited as relevant include that the institution represent a people with ancestral connections with their lands, territories and resources, who share history, language and culture, who exercise the collective rights of the people and who have the authority to practice self-government and, where relevant, who have entered into treaties, agreements or other constructive arrangements.

One submission recommended that the information required to obtain accreditation be flexible enough to take into account the wide variety of Indigenous peoples' governance institutions, including traditional forms of governance, regional representative councils and parliaments.

There appears to be considerable agreement that Indigenous peoples representative institutions should have the exclusive authority to designate their own individual representatives in accordance with their own procedures but the said representatives should have appropriate credentials from the institutions that they represent. Similarly, there is support for the view that Indigenous representatives should be recognized by their own constituents as such.

E Comments on resources with respect to enhanced participation

A number of participants requested more information about the financial implications of the proposals to enhance Indigenous peoples' participation at the UN pointing out that the budgetary implications of enhanced participation need to be considered. Others considered that, while relevant, the financial implications should not be a stumbling block on the road to enhanced participation for Indigenous peoples at 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.

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 Permanent Forum on Indigenous Issues 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).