



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

20 May 2019

Dear Indigenous Peoples Representatives,

I am pleased to enclose herewith the summary of the second informal interactive hearing with indigenous peoples, held on Thursday, 25 April 2019.

The summary contains the key messages and recommendations shared by Member States and indigenous peoples' representatives during the interactive hearing. I trust that this outcome will assist Member States in their consideration of possible further measures necessary to enhance the participation of indigenous peoples in relevant United Nations meetings on issues affecting them, which will continue at the seventy-fifth session of the General Assembly.

In my communication to Member States, I have encouraged them to remain engaged in this process and to support and facilitate the organization of regional consultations with indigenous peoples, especially in connection with the Secretary-General's report to be submitted to the Assembly at its seventy-fourth session.

I am grateful to delegations and indigenous peoples' representatives who contributed to this informal interactive hearing.

Yours Sincerely,

A handwritten signature in blue ink that reads "M. ESPINOSA".

María Fernanda Espinosa Garcés

All Representatives of Indigenous Peoples

Second Informal Interactive Hearing with Indigenous Peoples on Indigenous Peoples enhanced participation in the United Nations

25 April 2019, New York

President's Summary

Pursuant to paragraph 8 of the General Assembly resolution 71/321, the President of the General Assembly, H.E. Ms María Fernanda Espinosa Garcés, convened the second informal interactive hearing with indigenous peoples on 25 April 2019. This second of three informal interactive hearings with indigenous peoples was part of the preparatory process for the consideration of possible further measures necessary to enhance the participation of indigenous peoples' representatives and institutions in relevant United Nations meetings on issues affecting them by the General Assembly at its seventy-fifth session. The 2019 hearing provided an opportunity for a productive exchange between Member states and indigenous peoples with the aim of building on the work of the first hearing.

The hearing was divided into two panels, one on "selection criteria" and one on "venues and modalities of participation". Both panels aimed to provide an overview of progress, gaps and challenges; encourage concrete steps on the way forward; showcase practice and replicable examples of best practices; ensure the appropriate consideration of new and emerging issues; and promote transparency and inclusiveness by encouraging open and frank debate.

The opening segment featured a spiritual ceremony by indigenous women followed by welcoming remarks of H.E. Ms. María Fernanda Espinosa Garcés, President of the 73th Session of the General Assembly and Ms. Anne Nuorgam, Chair of the Permanent Forum on Indigenous Issues. Panel 1 on the "selection criteria" focused on the right to self-determination and self-identification as enshrined in the UN Declaration on the Rights of Indigenous Peoples. The panel was moderated by Dr. Claire Charters, Professor of Law, University of Auckland and former advisor to the PGA on Indigenous Peoples' Participation, with the panellists Mr. Adelfo Regino Montes, Director General of the National Institute for Indigenous Peoples of Mexico; Dr. Mariam Wallet Aboubakrine, Expert Member of the UNPFII; Hereditary Chief Akile Ch'oh Grand Chief Edward John, Tl'azt'en Nation/First Nations Summit; and Ms. Victoria Tauli-Corpuz, Special Rapporteur on the Rights of Indigenous Peoples. Panel 2 focused on venues and modalities of participation. The panel was moderated by H.E. Kai Sauer, Permanent Representative of

Finland to the United Nations, with the panellists Mr. Royal/Ui/o//oo, Deputy Minister for Marginalized Communities of Namibia; Ms. Aili Keskitalo, President of the Sami Parliament; Ms. Tania Pariona, Congresswomen of the Republic of Peru; and Andrea Carmen, Executive Director of the International Indian Treaty Council (IITC).

Achievements and challenges

Speakers from among the panellists, member states and indigenous representatives alike spoke of achievements in terms of indigenous participation at the United Nations over the decades. There is awareness that indigenous peoples' voices are essential to the General Assembly and other UN venues and that the UN can broaden the way it looks at the world through indigenous peoples' participation.

Among the achievements, in terms of participation, were the precedent-setting direct participation of indigenous peoples at the former UN Working Group on Indigenous Populations since 1983 and the subsequent similar practice at the UN Permanent Forum on Indigenous Issues (PFII) and the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). Enhanced participation has been facilitated, among other things, by the UN Voluntary Fund for Indigenous Peoples (established in 1985), replicated via direct indigenous representation at international human rights treaty bodies, the mechanisms of the Convention on Biological Diversity, WIPO, IFAD, UNFCCC, the Arctic Council and with the SDG processes, among others.

A recent achievement mentioned by many speakers is the UN Framework Convention on Climate Change (UNFCCC)'s Local Communities and Indigenous Peoples Platform and the Facilitative Working Group (FWG), following the Paris Agreement. Established at COP 24 in 2018, the FWG has an equal representation of indigenous representatives and state representatives (seven each) and the indigenous representatives are selected by indigenous peoples themselves.

Among the challenges identified for further dialogue were existing misunderstandings of the term "indigenous". There were some who argued that "we are all indigenous" to a specific continent, while, others reminded the room that the term "indigenous" refers to a host of criteria (for example as listed in the Martinez-Cobo study), including marginalization of certain parts of the population who were left behind. This was a particular challenge for example in Africa, despite the rich work done on the issue by the African Commission on Human and Peoples' Rights, which provided clarifications on the matter. Furthermore, some participants noted that in previous consultations there was no definition of "indigenous peoples" adopted by the UN and some states do not

recognize indigenous peoples in their territory. Some Member states felt the discussions were reverting to the fundamental questions discussed for many years, with the selection criteria as being one of the most complex issues in terms of recognition of indigenous peoples.

While the majority of participants gave priority to the participation of indigenous governing bodies and traditional authorities, some NGOs also spoke to their desire to participate more broadly. There were strong statements that indigenous peoples are not NGOs and therefore special provisions need be made for indigenous participation and it must be supported, as the World Conference on Indigenous Peoples Outcome Document provided. Moreover, there was general agreement that a future resolution on participation must not fall below the standards of the UN Declaration on the Rights of Indigenous Peoples (the Declaration).

One challenge identified was around national and local recognition. Some member states argued that for increased indigenous peoples' participation at the United Nations, national recognition was necessary. Some indigenous representatives insisted that recognition by States at the national level should not be a mandatory criterion for recognition of indigenous peoples' representative institutions at the United Nations, since some states do not recognize indigenous peoples within their territories. Some indigenous representatives highlighted the issue of lack of recognition in constitutions and/or legislation, while others noted that in their national systems, via their constitutional and other legal order, indigenous peoples' own representative institutions have been playing a pivotal and constructive role in public affairs. In various African countries, indigenous traditional authorities are often consulted on national matters. Overall there was agreement that there are challenges to participation at the international level, if there is no recognition at the national levels. Some member states noted that significant advances have taken place at the local level to include indigenous peoples' representatives in decision-making processes and within the different branches of government.

There was general agreement that indigenous peoples should participate within the UN system. The achievements to date as mentioned above provided strong examples supporting greater participation. The challenge emerged in determining what venues. However, there was widespread support by both member states and indigenous peoples that venues should be expanded and more inclusive.

Conclusions and recommendations

1. Overall recommendations

An overall recommendation to enhance indigenous participation within the UN system, by many indigenous peoples and member states, is for the appointment of a UN Special Representatives on Indigenous Peoples to be appointed by the Secretary General.

The second overall proposal from many participants was for member states to organize regional in-depth dialogues before the 75th Session on participation similar to those held for the IPLCP. The PGA was requested to follow-up on the proposal.

2. Conclusions and recommendations on selection criteria

There was general agreement that any selection criteria must be diverse, reflect the body or instrument and be applied in a flexible way. To determine the criteria, the international instruments that already exists, such as International Labour Organization (ILO) Convention 169; the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration); and the Outcome Document of the World Conference on Indigenous Peoples must be utilized. Many speakers referred to the international normative framework provided in the Declaration, (particularly Articles 3, 18 and 33) and the ILO Convention No.169, Articles 2, 5 and 27, which provides the elements of the right to self-identification and self-determination. Hence the main criteria for selection should be self-determination and self-identification.

There was general recognition that a mechanism or procedure should be established to accredit indigenous peoples. It was largely agreed that the selection and accreditation processes must be fair and transparent for both indigenous peoples and member states, without a non-objection clause, calling for increased participation of indigenous women and girls. It was noted that a non-objection clause would violate the Declaration, which also contains Article 46, that provides balance and a caveat, thus responding to states' concerns. Some member states advocated for a flexible approach to the selection process, highlighting issues of diversity, self-identification and regional context while also emphasizing that any selection mechanism should respect the principles enshrined in the Declaration while also respecting the intergovernmental nature of the UN.

Some indigenous representatives proposed a mechanism to accredit indigenous peoples, composed by and for indigenous peoples (e.g. Nations, Confederations, Councils among others); and some specified that independent experts should participate in the accreditation procedure. Other participants, both from states and from indigenous peoples, suggested that it should be a body composed of independent indigenous peoples' representatives from each designated socio-cultural region of the world and conducted at the regional level. Some member states noted the importance of national context in selection and some suggested that a review process with state participation

should be included. In terms of a possible accreditation mechanism, it was advised that the UN NGO committee might provide some guidance in this respect. Accreditation of indigenous peoples should not fall below that of the current UN practice regarding ECOSOC NGO status.

Overall, speakers reiterated the need to establish a separate category for the participation of indigenous peoples at the UN with the main criterion as self-identification and self-determination as in the Declaration. It was also highlighted that indigenous peoples' governing bodies and traditional authorities should participate in the various UN venues and be held accountable for decisions taken. Some member states reiterated that self-identification is essential but should be made flexible for certain cases and that it should entail identification by other indigenous groups. One member state emphasized the importance of the collective participation of indigenous peoples as collective entities within the UN (in line with the Declaration) and the importance of respecting their existing representative and decision-making bodies. Additionally, some indigenous and member states suggested the format of participation used by human rights institutions in the Human Rights Council in accordance with the Paris Principles.

It was proposed by many participants that the principles outlined in the Martinez-Cobo study¹ provides the basis for selection criteria. Many also recommended utilizing the elements in the Martinez-Cobo Study for agreed criteria regarding "indigenous peoples".

Discussions around the importance of governments acknowledging indigenous peoples' representative bodies, at the national and local level, highlighted the challenge to apply this recognition at the international level in a manner that is respectful and responsive, yet flexible enough to reflect the diversity of indigenous peoples across the world. Noting this challenge, as mentioned earlier, it was recommended that further work is undertaken to identify specifically which indigenous peoples' representative organizations are already recognized by both governments and indigenous peoples themselves, respecting the principles contained in the UN Charter as well as the UN Declaration on the Rights of Indigenous Peoples, within the context of respecting the territorial integrity of States, while also respecting the rights of indigenous peoples to self-determination and self-identification. Some indigenous peoples also noted that the African Charter on Human and Peoples' Rights is quite progressive in terms of their rights and that indigenous peoples' position has been strengthened as a result of the report of the working group on indigenous populations/communities in Africa. This work could provide guidance in other regions for the recognition of indigenous peoples' rights.

¹ UN Doc. E/CN.4/Sub.2/1986/7

Several speakers suggested that an accreditation process should also aim at increasing the participation of women, youth, older persons and persons with disabilities. In the context of the participation of indigenous women, some participants drew attention to matriarchal societies where women hold the decision-making authority.

3. Conclusions and recommendations on venues and modalities of participation

In terms of venues, participants generally agreed that indigenous peoples should be represented beyond the indigenous-related UN bodies (UNPFII, UN EMRIP). Speakers proposed specific UN mechanisms, agencies, funds and programmes as well as meetings of states parties to international treaties. Other venues identified by both indigenous peoples and member states were the General Assembly and its Second and Third Committees, the Human Rights Council, the Economic and Social Council (ECOSOC) and conflict resolution processes. Indigenous representatives were clear that participation within UN processes, especially at the General Assembly, is very important to draw attention and action to the ongoing situations of indigenous peoples' rights at the national level.

Considering the national level, it was recommended that indigenous peoples engage with the UN system at the country level and that UN entities engage indigenous peoples locally. It was added that participation within the UN System – agencies, funds and programmes, at the country, regional and global levels, will facilitate the participation of indigenous peoples' governing institutions and representative bodies. Current good practices of indigenous peoples' participation, on parity with member states, include the UNFCCC, OAS, CBD, Arctic Council, among others.

Enhanced engagement with ECOSOC was widely supported. It was recognized by many participants that indigenous peoples' representatives and institutions should participate in ECOSOC and regional commissions. There was a particular focus on the Sustainable Development Goals (SDGs) and other development processes. Participants stressed that indigenous participation is an opportunity for constructive and collaborative solutions, especially regarding the achievement of the SDGs and facing climate change globally through contributions of indigenous knowledge. Recommendations included that indigenous peoples should submit reports to the UN regarding SDG implementation and

for indigenous peoples to have a standing invitation to the High-Level Political Forum (HLPF).

In terms of modalities for indigenous participation, there were a variety of views. Several representatives expressed that, in order for participation to be significant, indigenous peoples must be able to make statements and have the possibility to present written information. Suggested ways to engage included full engagement equal to member states, observer status without voting rights and attendance in meetings upon agreement of member states.

Indigenous representatives suggested granting observer status to indigenous peoples' governing bodies noting this will grant them only the right to participate, and not the right to vote, and therefore, member states should not have a reason to worry. Observer status should include the representation of governing bodies and traditional authorities, many of which are recognized under national law and are accountable to their peoples and communities. Some States emphasized that since there was no consensus on a new status, it might be worth exploring a more gradual approach within certain UN bodies. One possibility could be to start accrediting indigenous peoples' in fora and spaces where they already participate, and in this context, to consider to further strengthen the Voluntary Fund, HRC, UNPFII, EMRIP, SRIP.

Overall most member states expressed support for the ongoing processes to enhance indigenous participation. Some clarified that selected indigenous peoples should be held accountable to their electorate, have a good record of compliance and follow existing UN rules and regulations. Indigenous representatives highlighted their right to self-determination, especially in the context of cross border issues between states, indigenous peoples in conflict and/or in vulnerable situations.

Conclusion

The interactive hearing built on the previous consultations, drawing attention to the need to adopt a flexible approach that acknowledges the diversity of indigenous peoples' across countries/regions. There is a need to find formulas that are broad and, if possible, flexible enough to allow for the inclusion of various governance institutions of the indigenous peoples. Any outcomes of this process must reflect this diversity, while keeping in mind that indigenous peoples are not Non-Governmental Organizations.

During this second interactive hearing, 35 indigenous peoples and 14 member states representatives took the floor.

Overall there was agreement that the United Nations must not lose sight of the central objective to enhance the participation of indigenous peoples. Indigenous peoples must be able to make their voices heard, without moving backwards on their rights, as was agreed by United Nations Member States in the United Nations Declaration on the Rights of Indigenous Peoples. As a few participants noted, indigenous participation should be seen not as a threat but an opportunity. The United Nations must to continue to align with the UN Charter, while taking into account the ever-evolving nature of the UN to be “relevant to all people”.

15 May 2019