

Participation of Indigenous Peoples' representatives and institutions in relevant United Nations meetings on issues affecting them

Discussion Paper for General Assembly Consultations with Member States and Indigenous Peoples

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1. Introduction

This discussion paper has been prepared to focus the relaunched discussions on the enhanced participation of Indigenous Peoples at the UN General Assembly (UNGA) following the COVID-19 pandemic.

We outline (1) history and context of the enhanced participation process, (2) relevant background material, (3) the mandate for this process, (4) the justifications for enhanced participation on Indigenous Peoples, and (5) key issues. We provide guiding questions to support an efficient discussion of the key issues in play.

The intent of these consultations, to be held on the basis of this discussion paper, will be to progress towards an outcome related to the enhanced participation of Indigenous Peoples at the UN. The co-facilitators and advisors are committed to the equal participation of both Member States and Indigenous Peoples throughout the negotiations.

The co-facilitators and advisors remain available for further discussion on this matter in bilaterals, both virtual and in person, and in regional meetings.

2. History and Context

The issue of the participation of Indigenous Peoples on international organizations has been considered since the first representatives of Indigenous Peoples. Chief Deskaheh (Turtle Island) and, shortly after, Prophet Ratana (Aotearoa) attempted to participate in the League of Nations in the early 1920s. The movement gained traction in the 1970s and has remained strong since negotiations on the UN Declaration on the Rights of Indigenous (UNDRIP) began. Indigenous Peoples have been consistent and persistent in their calls for participation.

UNDRIP states,

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by

themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 41: The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

UN human rights committees have regularly affirmed states' obligations under international human rights treaties to enable Indigenous Peoples' participation in decisions that affect them.¹ When doing so, they regularly interpret human rights treaty obligations in line with the UNDRIP. Member States have also regularly included the participation of Indigenous Peoples in decision-making as recommendations through the Human Rights Council's Universal Periodic Review process.

A significant number of inter-governmental UN bodies, and agencies, have devised and implemented measures to enable greater participation of Indigenous Peoples including, by way of examples, within the United Nations Framework Convention on Climate Change (UNFCCC), World Intellectual Property Organization (WIPO), United Nations Educational, Scientific and Cultural Organization (UNESCO), the Human Rights Council (HRC) and the Convention on Biological Diversity (CBD). Most notably, Indigenous Peoples participate in the annual sessions of the UN Permanent Forum on Indigenous Issues (UNPFII),² and the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).³ They are accredited via an open process administered by the respective secretariats associated with those bodies. At present, participation of non-state actors in the ECOSOC and the Human Rights Council (HRC) has traditionally been limited to those accredited by ECOCOC, and some Indigenous Peoples' non-governmental organisations and Indigenous Peoples' governance bodies have ECOSOC status. Further, in negotiations of the working group to draft the UNDRIP, non-ECOSOC and ECOSOC accredited Indigenous Peoples participated equally alongside Member States.

In the HRC, ECOSOC-accredited Indigenous Peoples participate in the negotiations on the annual resolution on human rights and Indigenous Peoples. Looking ahead, most recently, the HRC has decided (A/HRC/RES/54/12) that Indigenous Peoples' representatives and

¹ Examples include: CERD/C/USA/CO/10-12, 21 September 2022, para. 50; C_a_m_p_o_ _A_g_u_a'_e_ _o_f_ _t_h_e_ _A_v_a_ _G_u_a_r_a_n_i_ _P_e_o_p_l_e_ _v_ _P_a_r_a_g_u_a_y_ , CCPR/C/132/D/2552/2015 (12 October 2021), para. 8.7; CEDAW General Recommendation 39:

https://www.ohchr.org/Documents/HRBodies/CEDAW/CN_IndigenousWomen_EN.docx. For a myriad of other examples between 2020 and 2023, including the jurisprudence of the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur, please see:

<https://iprights.org/index.php/en/component/content/article/a-compilation-of-un-treaty-body-jurisprudence-special-procedures-of-the-human-rights-council-and-the-advice-of-the-expert-mechanism-on-the-rights-of-indigenous-peoples-volume-ix?catid=9&Itemid=102>

² UNPFII is a subsidiary body of ECOSOC based in New York. Indigenous Peoples' Organizations accredited to the Permanent Forum can participate in the annual session of the Forum. The accreditation is managed Indigenous Peoples and Development Branch/Secretariat of the Permanent Forum on Indigenous Issues (IPDB/SPFII) based in New York in the in the Division for Inclusive Social Development (DISD) of the Department of Economic and Social Affairs (DESA). Mandate: OP1 of E/2000/22 and OP 1(a) of A/RES/57/191.

³ The EMRIP is a subsidiary body of the HRC, which is based in Geneva. Registration for its annual session is open for participants from indigenous organizations and indigenous representative institutions accredited to the EMRIP. The approval of registration is in charge of the EMRIP Secretariat. Mandate: OP13 of A/HRC/RES/33/25.

institutions from the seven Indigenous sociocultural regions will participate in the interactive dialogues with the Special Rapporteur on the Rights of Indigenous Peoples and with the EMRIP in the upcoming 57th session of the HRC (9 September to 9 October 2024). The President of the HRC, the EMRIP and the Office of the United Nations High Commissioner for Human Rights (OHCHR) will support Indigenous Peoples' participation in this regard.⁴

Steps towards enhancing Indigenous Peoples' participation at the UNGA have been taken in a process of mutual trust-building between Member States and Indigenous Peoples. During discussions that took place in 2016-2017 in New York, specific measures were considered for enhancing participation in the sessions and work of the UNGA and its main Committees, ECOSOC, and the HRC. While no decision was adopted at that time, the process has continued in both New York and Geneva, including side-events and mandated hearings, expert workshops and intersessional meetings.

3. Background Material

The substantive and procedural issues associated with the enhanced participation of Indigenous Peoples have been discussed at length in multiple fora including during negotiations on the UNDRIP, at the HRC, the PFII and the EMRIP.

These issues are addressed extensively in reports from the Secretary General,⁵ the EMRIP,⁶ the President of the General Assembly⁷, in academic publications and elsewhere. Consultations on the topic were extensive between 2016 and 2017, and at the subsequent informal interactive hearings held by the President of the General Assembly and within the sessions of the PFII since then.

There is a plethora of material available on past consultations and negotiations available online: <https://social.desa.un.org/issues/indigenous-Peoples/participation-of-indigenous-Peoples-at-the-un>. We encourage Member States and Indigenous Peoples to familiarize themselves with the material contained therein, particularly:

- The four [compilations](#) outlining the various views on aspects of enhanced participation for Indigenous Peoples' representatives.
- The final "[elements paper](#)" setting out the central ideas and options for the resolution on enhancing Indigenous Peoples' participation at the UN in 2017.
- [Second revised text](#) (Rev.2) of the "draft resolution on enabling the participation of Indigenous Peoples' representative and institutions in meetings of relevant United Nations bodies on issues affecting them" (16 June 2017).

⁴ OP23 of A/HRC/RES/54/12

⁵ A/75/255; A/70/84-E/2015/76; A/HRC/21/24

⁶ EMRIP Annual Reports (see ohchr.org/en/hrc-subidiaries/expert-mechanism-on-indigenous-peoples; and A/HRC/53/44

⁷ A/70/990

- UN General Assembly Resolution [A/RES/71/321](#) (2017) entitled “Enhancing the Participation of Indigenous Peoples’ Representatives and Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them.”
- Summary of the PGA’s [first informal interactive hearing](#) (17 April 2018)
- Summary of the PGA’s [second informal interactive hearing](#) (25 April 2019)
- Summary of the PGA’s [third informal interactive hearing](#) (20 April 2023)
- UN General Assembly Resolution [A/RES/78/189](#) (2023) entitled “The Rights of Indigenous Peoples.”
- Report of the Secretary General [A/75/255](#) entitled “Enhancing the participation of Indigenous Peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.”

4. Mandate

The mandate for these negotiations stems from:

- UNDRIP
- The outcome document of the World Conference on Indigenous Peoples (A/RES/69/2).⁸
- UN General Assembly Resolution A/RES/70/232 (2015) entitled “The Rights of Indigenous Peoples.”⁹
- UN General Assembly Resolution A/RES/71/321 (2017) entitled “Enhancing the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.”¹⁰
- UN General Assembly Resolution A/RES/78/189 (2023) entitled “The Rights of Indigenous Peoples.”¹¹

Resolution A/RES/71/321 emphasized the importance of Indigenous participation and outlined further efforts to facilitate the participation of Indigenous Peoples in meetings of relevant UN bodies on issues affecting them. It also called for continuing consultations through informal interactive hearings (all of which have been held) and through regional consultations. The resolution provided a mandate to return to this matter in the 75th session

⁸ <https://documents.un.org/doc/undoc/gen/n14/468/28/pdf/n1446828.pdf?token=SJSrIMltvSGX1oD1cz&fe=true>; Member States committed themselves to considering 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) and requested the Secretary-General to report to the General Assembly and submit specific proposals to enable the participation of indigenous peoples’ representatives and institutions.

⁹ <https://documents.un.org/doc/undoc/gen/n15/457/09/pdf/n1545709.pdf?token=IF8HFfsbtG2kWqaPa&fe=true>; “request[ed] 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.”

¹⁰ <https://documents.un.org/doc/undoc/gen/n17/281/69/pdf/n1728169.pdf?token=urGhFvXUdWPP6Bz9OZ&fe=true>

¹¹ <https://documents.un.org/doc/undoc/gen/n23/424/44/pdf/n2342444.pdf?token=pOvaQ879GVcdYYNo2M&fe=true>

of the General Assembly. However, the COVID-19 pandemic disrupted the UNGA's further consideration of the issue by the 75th session, as mandated.

In Resolution A/RES/78/189, the UN General Assembly decided to continue 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 at the seventy-eighth session, as originally requested in UNGA resolution A/RES/71/321. The President of the UNGA appointed Canada, Peru, Dr Claire Charters and Belkacem Lounes to facilitate consultations on enhanced participation at the UN, drawing on similar arrangements mandated in 2016 and 2017. The first informal consultation was held on April 17, 2024, in the margins of the PFII.

5. Rationale for the enhanced participation of Indigenous Peoples

The above-mentioned reports and decisions from various UN bodies outlines the myriad of arguments for enhancing Indigenous Peoples' participation at the UN. They reflect justifications articulated by Indigenous Peoples for over fifty years.

Justifications include compliance with existing norms and jurisprudence under international law and policy such as:

1. The Indigenous Peoples Declaration recognition of Indigenous Peoples' right to self-determination in, inter alia, articles 3, 4, 5, 18,19, 32 and 41. The text of articles 18 and 41, which set the frame for our discussions, are set out in full above.
2. Jurisprudence from international human rights treaty bodies, the EMRIP, the Special Rapporteur on the rights of Indigenous peoples and the PFII.¹²
3. Practice of including Indigenous Peoples in international inter-governmental organisations, agencies and bodies.

Substantive justifications include *inter-alia*:

1. That Indigenous Peoples are not minorities but peoples with the rights to self-determination and thus are not "non-governmental organisations." As such, Indigenous Peoples should not be only restricted to the format of non-governmental organizations when exercising these rights.
2. International law and policy related to Indigenous Peoples should not be drafted without Indigenous Peoples' input and, in some cases, free, prior and informed

¹² <https://iprights.org/index.php/en/component/content/article/a-compilation-of-un-treaty-body-jurisprudence-special-procedures-of-the-human-rights-council-and-the-advice-of-the-expert-mechanism-on-the-rights-of-indigenous-peoples-volume-ix?catid=9&Itemid=102>.

consent. Indigenous Peoples have issued a call for “nothing about us without us.”

3. Indigenous Peoples have a long history of contributing positively and constructively in international bodies, agencies and institutions.

6. Key Issues

To date, consultations and negotiations have been focused on four issues, namely:

- Venues: the bodies in which Indigenous Peoples would participate.
- Modalities of participation: the prerogatives that Indigenous Peoples would have when participating.
- Accreditation process: The procedure for accrediting the individuals that would participate.
- Accreditation criteria: The criteria that those responsible for the accreditation process should follow for granting accreditation to an individual.

As you will note from the above-mentioned documents, the prior intergovernmental negotiations on this issue had significantly advanced and had enjoyed broad support in certain areas, namely, modalities and venues of participation. Member States are encouraged to build on these prior consultations by focusing energies in the areas that were less advanced, namely, accreditation mechanism and criteria. However, these past consultations must not constrain our collective thinking on new, innovative and effective ways to potentially address these issues.

7. Guiding Questions [to be reviewed]

Modalities and venues

There was general agreement in the 2017 negotiation with respect to the preamble, venues and modalities and general principles as detailed in the abovementioned Rev.2. Do you continue to agree, in principle, to these preambular and operative paragraphs? If not, why not? Do you have proposed language you could share?

How can existing UN mechanisms be adapted or expanded to better facilitate Indigenous peoples' participation?

In your view, which meetings of relevant UN bodies could be considered as addressing issues affecting Indigenous Peoples? Based on this, which venues in the UNGA, ECOSOC or other related bodies could be considered for the participation of Indigenous Peoples? Should we explicitly set out the venues or issues on which Indigenous peoples can participate or should we enable, for example, an independent entity to determine this on a case-by-case basis, for example the respective Presidents or the bureaus of the concerned bodies?

Should we consider facilitating the participation of Indigenous Peoples in the Third Committee's dialogue with the UN Special Rapporteur on the Rights of Indigenous Peoples during the 79th session (September to November 2024)?

Accreditation mechanism and criteria

Is there a novel way to address the substantive issues related to accreditation and criteria?

How can Member States ensure transparency and fairness in the accreditation process for Indigenous Peoples representatives and institutions?

There are different ways in which Indigenous Peoples are enabled to participate in UN bodies, international conferences of the parties and so on. In some cases, selection is assigned to UN staff and bodies e.g. the respective secretariats of UNPFII and EMRIP. Should we consider adopting similar processes?

How do we ensure that there is representation by Indigenous Peoples' representatives and institutions from all regions?

Going forward

How do we ensure that the efforts we have made to consolidate our progress, and to ensure continuity, can be continued into the next session of the General Assembly in 2024-25?