**Expert Workshop on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council**

**Geneva, Switzerland**

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Thank you for this opportunity to provide a written submission on this very important topic. I am grateful for the support to attend the session in person with the support of the UN Voluntary Fund for Indigenous Peoples. I look forward to discussing these topics further at the workshop.

I am a member of the Wəlastəkwey (Maliseet) Nation at Negwotkok (Tobique), in New Brunswick, Canada, as well as a current member of the Coalition for the Human Rights of Indigenous Peoples, however, I am providing this written submission in my individual capacity.

**General**

As elaborated by the Dialogue Meeting on Enhanced Indigenous Peoples’ Participation at the UN from 27-30 January 2020, in Quito, Ecuador, the Human Rights Council is encouraged to ensure that the enhanced participation process be guided by:

1. “The right of self-determination of Peoples as enshrined in the Charter of the United Nations, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, and the *UN Declaration on the Rights of Indigenous Peoples* (Hereinafter the *UN Declaration*).
2. The UN Declaration, the Alta Outcome Document, and the World Conference on Indigenous Peoples Outcome Document, as these documents are the foundation of our work in this process.
3. The provisions of the UN Declaration, including *inter alia*, Articles 3, 18 and 33 which affirm our rights to self-determination, to define our own identity, priorities and political status, and also our right to participate in decision-making in matters that affect us through representatives selected through our own internal processes.
4. The enhanced participation process, both under the UN General Assembly, and the UN Human Rights Council, must be fully consistent with the provisions of the *UN Declaration* as minimum standards.”[[1]](#footnote-1)

Further – with respect to the Human Rights Council specifically, the Dialogue Meeting included the following request:

1. “Request the President of the Human Rights Council to conduct timely, representative and transparent consultations and negotiations with Member States and representatives of Indigenous Peoples, on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of Indigenous Peoples’ representative institutions in meetings of the Human Rights Council on issues affecting them.
2. encourage the President of the Human Rights Council to appoint co-facilitators, one nominated by Member States, one nominated by Indigenous Peoples, to conduct informal and formal consultations and negotiations in an open, inclusive and transparent manner.
3. We call on the Human Rights Council, on discussions of enhanced participation, to allow Indigenous Peoples organisations and representative institutions representatives to participate without requiring ECOSOC accreditation.”[[2]](#footnote-2)

Finally, it is recommended that the process of consultation and negotiations take place as soon as possible, with the aim of having a decision adopted by the Human Rights Council in September 2024.

**Response to Key Questions:**

1. **Venues of participation**:

**How could the existing level of participation of Indigenous Peoples’ representatives and institutions at the Human Rights Council be enhanced in order to be effective and meaningful?**

Enhanced participation is critically important for Indigenous Peoples to exercise their universal, indivisible, interdependent and interrelated human rights, including the right to self-determination as elaborated in the *UN Declaration*. As stated by the Coalition on the Human Rights of Indigenous Peoples, the *UN Declaration* contains “minimum standards for all States. The intent that all States should live up to these standards has been repeatedly reaffirmed through subsequent UN General Assembly resolutions. The Declaration is now a consensus international human rights instrument unopposed by any State.”[[3]](#footnote-3) And yet, 15 years after the adoption of the *UN Declaration*, Member States and the United Nations still fail to meet those minimum standards, including regarding participation in the United Nations itself.

Worse, we have seen attempts to water down these rights – to suggest that Indigenous Peoples’ governments and Institutions should be satisfied with only having access to a few bodies within the UN such as the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples; to require that Indigenous Peoples must register as Non-Governmental Organizations in order to participate in the Human Rights Council; and to lump Indigenous Peoples in with local communities or minorities.

Therefore, a new separate category of participation for Indigenous Peoples’ Governments and Representative Organizations in the Human Rights Council would uphold the rights elaborated in the *UN Declaration*.

**To which venues would a new separate category of participation of Indigenous Peoples’ representatives and institutions in the Human Rights Council give access to?**

Indigenous Peoples’ governments and representative institutions should be able to participate in all meetings of the Human Rights Council and subsidiary bodies that Indigenous Peoples themselves deem relevant. As a start, this should include, but not be limited to: interactive dialogues with Special Rapporteurs (not only the Special Rapporteur on the Rights of Indigenous Peoples); the interactive dialogue with the Expert Mechanism on the Rights of Indigenous Peoples; and annual half-day discussions, panels and intersessional activities on the rights of Indigenous Peoples.

**Which criteria should be considered when deciding which meetings of the Human Rights Council should include the participation of Indigenous Peoples’ representatives and institutions?**

Indigenous Peoples’ governments and representative institutions should be able to make this determination for themselves. Priorities will likely change depending on regional and local circumstances.

1. **Participation modalities**:

**What are the current gaps and challenges in terms of existing procedures and practices?**

Requiring Indigenous governments and representative organizations to apply and participate as Non-Governmental Organizations in the United Nations does not accurately reflect the status of Indigenous governments or meet the standard of self-determination elaborated in the *UN Declaration on the Rights of Indigenous Peoples*.

Currently, Indigenous Peoples can only participate as governments and representative organizations (without NGO accreditation) in the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, therefore they can only speak on “Indigenous issues” rather than matters that may affect them that are being discussed throughout the UN System, including in the Human Rights Council and its subsidiary bodies.

However, a new category of participation should not in any way undermine existing unique procedures permitting the participation of Indigenous Peoples in the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.

**What measures could be taken to overcome those gaps and challenges, and at what level?**

This new category of participation should ensure that Indigenous Peoples’ governments and representative organizations are given priority over Non-Governmental Organizations including with respect to speaking order, seating, and length of statements.

It is also recommended that the Human Rights Council standardize the use of the formulation “Indigenous Peoples’ governments and representative institutions” instead of representatives and institutions which could be misconstrued to mean individuals or even Non-Governmental Organizations.

**What kind of arrangements can be foreseen to ensure effective and meaningful participation of Indigenous Peoples’ representatives and institutions?**

It is recommended that Indigenous Peoples’ governments and representative institutions have access to all modalities, with the exception of the right to vote. This would include making interventions/providing written and oral statements, proposing agenda items, adequate seating arrangements, co-facilitation of consultations and negotiations, and participation in informal negotiations of resolutions. This participation must not be limited to one participant per socio-cultural region, as this would not be consistent with the *UN Declaration*.

1. **Selection mechanism:**

**How would a new mechanism for the accreditation of Indigenous Peoples’ representatives and institutions facilitate the process?**

Existing mechanisms do not have adequate resources or necessary expertise to support the accreditation of Indigenous Peoples’ governments and institutions for a new category of participation.

**What would be the nature and the membership of such mechanism?**

Existing mechanisms do not have adequate representation of Indigenous Peoples and therefore are not well suited to address the selection criteria. It is recommended that a new mechanism should have at least 51% of the seats allocated to Indigenous Peoples from the seven sociocultural regions.

**Which powers would the mechanism have?**

It is recommended that the new mechanism have the power to make a final determination regarding the granting of status (ie. it should not be a recommendation to the president of the HRC or ECOSOC), rather, the experts appointed to the new mechanism should be able to make a final determination following the presentation of appropriate documentation, appropriate regional consultations and consultations with the UN bodies noted below.

**Which other existing UN bodies could be involved in the decision on accreditations?**

The Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples and their associated secretariats have relevant expertise to offer additional advice to a new mechanism, given their familiarity with Indigenous Peoples who are active within the UN system.

**How would its decisions be appealed and by whom?**

The new mechanism could set up a subcommittee to deal with appeals that could consider new information. This subcommittee should also have 51% representation from Indigenous Peoples.

1. **Selection criteria:**

**What factors should be considered to assess if applicants represent Indigenous Peoples’ institutions?**

Enhanced participation should be consistent with the *UN Declaration on the Rights of Indigenous Peoples*. Therefore, the new category of participation should focus solely on Indigenous governments and institutions. In the words of the Dialogue Meeting on Enhanced Indigenous Peoples’ Participation at the UN, 11-12 November 2016, Bangkok, Thailand: “…enabling Indigenous Peoples and nations direct participation through their representative institutions, including their governments, parliaments, traditional councils and other authorities, recognising that the situation varies from region to region and taking into account various historical and cultural backgrounds.”[[4]](#footnote-4)

Theme 2, paragraph 11 of the Alta Outcome Document recommended that the UN “Recognize Indigenous Peoples and Nations based on our original free existence, inherent sovereignty and the right of self-determination in international law. We call for, at a minimum, permanent observer status within the UN system enabling our direct participation through **our own governments and parliaments**. Our own governments include inter alia **our traditional councils and authorities**.”[emphasis added][[5]](#footnote-5)

**Which credentials would be necessary for Indigenous Peoples’ institutions to be considered eligible?**

To meet the recommendation contained in the Alta Outcome Document, applicants should be able to demonstrate that they are an Indigenous government or representative institution, in a manner that is consistent with the UN Declaration, specifically Article 18, which states: “…right to participate in decision-making in matters which would affect their rights, through **representatives chosen by themselves in accordance with their own procedures**…” [emphasis added].

**Which process would the new established mechanism apply in granting the status of the new category of participation?**

Indigenous Peoples are Peoples with the right to self-determination, as defined in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the *UN Declaration on the Rights of Indigenous Peoples*.

Therefore, it is recommended that the process should ensure that the new status is limited to governments and representative institutions of Indigenous Peoples (and not Indigenous NGOs). Indigenous NGOs currently have access to the UN in the same manner as other Non-Governmental Organizations and this should continue. NGOs should never attempt to speak on behalf of or assume the self-determination space of Indigenous Peoples.

Indigenous Peoples themselves should have the final say in granting the status of the new category of participation – this means that peer recognition will be important, as will a majority of Indigenous participants on the new mechanism granting the new status. Other Indigenous Peoples in the respective regions should recognize that applicants are Indigenous governments and representative institutions. Therefore. the mechanism should consult with other Indigenous Peoples in the region prior to granting status to ensure that they are recognized by their peers.

**Are there similar existing accreditations processes that could be considered?**

* The process used to accredit NHRIs - The Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) has the mandate to review and analyze accreditation applications and to make recommendations to the GANHRI Bureau on the compliance of applicants with the Paris Principles.
* The UNFCCC Local Communities and Indigenous Peoples Platform is a recent precedent where Indigenous Peoples determine their own representatives (although local communities should not be included in the new category of participation at the HRC - As noted earlier, the new category should be based on Indigenous Peoples’ right to self-determination).

1. <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH012b/9dd1a3e1.dir/ENG%20Quito%20Outcome%20Document%202020%25281%2529.pdf> [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. <https://www.declarationcoalition.com/wp-content/uploads/2022/03/UNDRIP_Implementation_ENG.pdf> [↑](#footnote-ref-3)
4. <https://aippnet.org/wp-content/uploads/2020/03/1-Outcome-Docs_Layout_FINAL.pdf> [↑](#footnote-ref-4)
5. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/474/69/PDF/N1347469.pdf?OpenElement> [↑](#footnote-ref-5)