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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

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

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 48/11. It summarizes the proceedings of the expert workshop on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council, held from 21 to 24 November 2022. It contains summaries of the opening statements and of the discussions held on venues of participation, participation modalities, selection criteria and selection mechanisms, as well as the recommendations resulting from the discussions held on those topics. A list of those who contributed to the discussions is presented in the annex.

* The annex to the present report is reproduced as received, in the language of submission only.

I. Introduction

1. The present summary report is submitted pursuant to Human Rights Council resolution 48/11 on human rights and Indigenous Peoples, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene a four-day expert workshop in 2022, open to the participation of States and of Indigenous Peoples from the seven Indigenous sociocultural regions, on possible ways to enhance the participation of Indigenous Peoples in the work of the Council. The Council also requested OHCHR to invite the submission of written contributions, to seek input from States, Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the rights of Indigenous Peoples and other relevant United Nations bodies, within their respective mandates, and to take into account the relevant work already done by stakeholders, including the Council and the Secretary-General, on enhancing the participation of Indigenous Peoples in meetings of relevant United Nations bodies on issues affecting them.

II. Process

2. In preparation for the expert workshop, OHCHR created a web page,[1] which contained information on the expert workshop, including the concept note, agenda and relevant United Nations documents.

3. Information about the expert workshop was also communicated to permanent missions at the United Nations Office at Geneva through notes verbale dated 18 July, 5 October and 17 November 2022.

4. A total of 132 participants registered to attend the expert workshop, of whom 24 were Indigenous representatives who received travel grants from the United Nations Voluntary Fund for Indigenous Peoples.

5. The expert workshop was held from 21 to 24 November 2022 at the Palais des Nations, Geneva. It consisted of eight meetings, which were open to the public, with interpretation in the six official languages of the United Nations.[2]

6. The expert workshop was co-facilitated by Tine Mørch Smith, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Norway to the United Nations Office in Geneva, representing States, and by Mariam Wallet Aboubakrine, Adjunct Professor at the University of Ottawa and former Chairperson of the Permanent Forum on Indigenous Issues, representing Indigenous Peoples. The following experts nominated by, or representing, States participated in the expert workshop: Stacey Lambert (Canada); Aramiro Tai Rākena (New Zealand) and Tove Søvndahl Gant (Kingdom of Denmark); as well as the following representatives from the Indigenous sociocultural regions: Belkacem Lounes (Africa); Daria Egereva (Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia); Iniquilipi Chiari (Central and South America, and the Caribbean); Kenneth Deer (North America); Sara Olsvig (the Arctic); and Les Melezer (the Pacific). Gam Shimray (Asia) could not participate owing to personal reasons.

III. Written contributions

7. The call for written contributions was launched on 18 July 2022. On a dedicated web page,[3] OHCHR proposed key guiding questions on each of the four topics to be discussed during the expert workshop, namely venues of participation, participation modalities, selection criteria and selection mechanisms.

[1] See https://www.ohchr.org/en/indigenous-peoples/expert-workshop-possible-ways-enhance-participation-indigenous-peoples-work-human-rights-council.

[2] Recordings of all the meetings are available at https://conf.unog.ch/digitalrecordings/.

[3] See https://www.ohchr.org/en/calls-for-input/2022/call-submission-written-contribution-expert-workshop-possible-ways-enhance.

8. Twenty-two written contributions were received from three States (Australia, Ecuador and Finland), two United Nations mechanisms (the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of Indigenous Peoples), the British Columbia Treaty Commission, the Sami Parliament of Finland, 10 civil society organizations and five individuals. All written contributions were posted online.[4]

9. Written contributions supported the enhanced participation of Indigenous Peoples in the work of the Human Rights Council, noting that the current modalities[5] were insufficient insofar as Indigenous Peoples could not participate if not accredited by non-governmental organizations with consultative status with the Economic and Social Council. Some contributions noted that any new modalities of participation or status should not be to the detriment of, or in any way diminish, the existing modalities of participation.

10. Concerning the venues of participation, submitters of written contributions expressed the view that Indigenous Peoples' representatives and institutions at a minimum should participate in all meetings of the Human Rights Council dedicated to Indigenous Peoples' rights, including those with the Special Rapporteur on the rights of Indigenous Peoples and with the Expert Mechanism on the Rights of Indigenous Peoples. All stressed that, beyond that minimum standard of participation, Indigenous Peoples themselves should be allowed to identify which venues were more relevant to them and should have the possibility to participate in any meeting concerning issues that, in their view, affected them, whether Indigenous-specific or not, noting that the perspective and contribution of Indigenous Peoples was valuable to all aspects of the work of the Council. Many contributions noted that the same considerations should apply to the participation of Indigenous Peoples across the United Nations system.

11. Concerning the participation modalities, all submitters called for participation modalities that were at a minimum equal to, and distinct from, those of non-governmental organizations accredited to the Economic and Social Council. Some contributions mentioned the participation modalities of the national human rights institutions in the Human Rights Council, of Indigenous Peoples at the United Nations Climate Change Conference held in Madrid in 2019, and the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform as possible models of participation for Indigenous Peoples' representatives and institutions. Other contributions advocated for participation modalities that were similar to those of permanent observers, with the exception of the right to vote. It was suggested that new participation modalities should allow for priority in the lists of speakers, the same speaking time as that allowed for other participants, separate seating arrangements, participation in informal consultations on the drafting of resolutions, submission of written contributions and written replies, the opportunity to take the floor to comment on country visit reports; and the opportunity to hold parallel events.

12. All written contributions recognized the need for a formal, permanent mechanism for the accreditation, with a separate status, of Indigenous Peoples' representatives and institutions. Most contributions stressed the need for the mechanism to be separate and independent from similar existing mechanisms. All contributions underscored that the mechanism should be composed of, or in the majority, of Indigenous Peoples' representatives from the seven Indigenous sociocultural regions, with no oversight role from States on the accreditation process. The mechanism would decide upon its own methods of work and be empowered to take final decision on accreditations, without the need for validation by other United Nations instances. The existence of an appeal procedure should guarantee the possibility of re-examining rejected accreditation requests. One contribution stressed the procedural nature of the mechanism.

13. Regarding selection criteria, the written contributions advocated for an interpretation of Indigenous Peoples' representatives and institutions that focused on self-governing bodies

[4] See https://www.ohchr.org/en/calls-for-input/2022/call-submission-written-contribution-expert-workshop-possible-ways-enhance.

[5] With the exception of those of subsidiary mechanisms such as the Expert Mechanism on the Rights of Indigenous Peoples, the Social Forum, the United Nations Forum on Business and Human Rights, the United Nations Forum on Human Rights, Democracy and the Rule of Law, and the United Nations Forum on Minority Issues.

and entities while taking into account the vast diversity of Indigenous Peoples' representatives and institutions. Indigenous Peoples should be involved in the determination of any eligibility criteria. Most contributions noted the following as particularly relevant selection criteria: membership, recognition and acceptance by, and accountability to, the Indigenous People represented; peer recognition by Indigenous Peoples other than the Indigenous People represented; and link with the native land and its heritage. Some contributions noted that Indigenous Peoples should be given the possibility to self-identify, although self-identification should be considered alongside other determining factors. Others noted that Economic and Social Council or State recognition, even if relevant, should not be part of the selection criteria and no State should have the power of veto over accreditation. Some contributions highlighted the importance of the existence of self-governing bodies and other self-governing entities, established by Indigenous Peoples themselves, and their capability to conclude treaties and agreements as a significant selection criterion. The selection criteria used by national human rights institutions to accredit applicant national human rights institutions from various regions, based on existing guidelines, namely compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles),[6] and that of the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform,[7] were considered good models.

IV. Opening of the expert workshop

14. The expert workshop was opened with an Indigenous prayer said by Brennen Ferguson of the Tuscarora Nation of the Haudenosaunee Confederacy.

15. The Director of the Thematic Engagement, Special Procedures and Right to Development Division of OHCHR, Peggy Hicks, noted that many obstacles existed to the participation of Indigenous Peoples in political processes and decision-making on issues that affected them, including in international organizations, and that those obstacles had severe consequences. Indigenous Peoples were entitled to participate fully, effectively and meaningfully in the work of the United Nations and in the Human Rights Council. In 2014, the United Nations Declaration on the Rights of Indigenous Peoples had recognized the rights of Indigenous Peoples to self-determination, to self-government and the right to participation in decision-making in matters that would affect their rights, through representatives chosen by them in accordance with their own procedures. Increased participation by Indigenous Peoples would bring added legitimacy and sustainability to the decisions adopted by the United Nations system, as stated in the report of the Secretary-General entitled "Our Common Agenda".[8] She invited all participants to consider the expert workshop as a space to innovate, to collaborate and to seek common positions that would allow for enhanced participation of Indigenous Peoples in the work of the Council through an incremental and paced approach.

16. The President of the Human Rights Council, Federico Villegas, recalled the importance of the participation of Indigenous Peoples in matters that affected them and recalled the negotiations leading up to the adoption of the American Declaration on the Rights of Indigenous Peoples in 2016. Progress had been made in the United Nations system since the landmark adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples[9] and the adoption of General Assembly resolution 71/321. In those documents, States and the United Nations committed to consult and engage with Indigenous Peoples on matters that affected them. The Council did not shy away from taking the lead on the process and had organized two intersessional

[6] A/HRC/21/24, paras. 52–54.
[7] See https://www4.unfccc.int/sites/NWPStaging/Pages/Facilitative-Working-Group-of-the-Local-Communities-and-Indigenous-Peoples-Platform.aspx.
[8] A/75/982, para. 34.
[9] General Assembly resolution 69/2.

interactive dialogues, in 2019[10] and 2021[11] respectively, the recommendations of which had led to the organization of the expert workshop. It was important to recall that reprisals and intimidation against Indigenous human rights defenders might induce them to self-censor and not cooperate with the United Nations organization.

17. The expert workshop co-facilitator, Ms. Mørch Smith, recalled that in 2013 hundreds of Indigenous Peoples, representing the seven sociocultural regions, the Women's Caucus and Youth Caucus, had met in the traditional territories and lands of the Sami people in Alta, northern Norway, and adopted the Alta Outcome Document, which had led to the organization of the World Conference on Indigenous Peoples the following year and whose outcome document was adopted by consensus by the General Assembly. The expert workshop had been long awaited and aimed to facilitate discussion between representatives of Indigenous Peoples and of States on the measures necessary to enhance the participation of Indigenous Peoples in meetings of the Council. The expert workshop represented an important opportunity to continue the consultation process and keep the dialogue open between States and Indigenous Peoples. She concluded by expressing the hope that focused and productive discussions, conducted in a constructive manner, would lead to recommendations aimed at clarifying the modalities for Indigenous Peoples' participation in the work of the Council in the future.

18. In a statement delivered on behalf of co-facilitator Ms. Wallet Aboubakrine, it was noted that the expert workshop would continue the work that had begun in 1923 when the Haudenosaunee leader, Deskaheh, had travelled to Geneva to attend a meeting of the League of Nations with the hope of achieving recognition of the sovereignty of the Iroquois Confederacy. He had not been allowed to address the League of Nations then or on his second attempt in 1924, and in 1925 Tahupōtiki Wiremu Rātana, a Maori leader, had also been denied entry to the League of Nations. Nevertheless, Indigenous Peoples had shown resilience and their efforts had ultimately led to the creation of several United Nations mechanisms, namely the Working Group on Indigenous Populations, the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of Indigenous Peoples, and to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous Peoples had contributed and greatly enhanced the work of the United Nations and continued to do so by tackling contemporary environmental, social, economic and spiritual crises that States alone could not solve.

19. The Chair of the Expert Mechanism on the Rights of Indigenous Peoples, Binota Moy Dhamai, recalled that the Expert Mechanism had recommended the holding of the expert workshop in order to implement the right of Indigenous Peoples to participation in decision-making matters that related to them, as provided for under articles 5 and 18 of the United Nations Declaration on the Rights of Indigenous Peoples. From the Indigenous Peoples' perspective, enhanced participation was an example of the exercise of their right to self-determination, as expressed in articles 3 and 4 of the Declaration. Article 41 of the Declaration specifically addressed the role of the United Nations in the full realization of its provisions, including by establishing ways and means of ensuring the participation of Indigenous Peoples on issues affecting them. Members of the Council were encouraged to allow for appropriate accreditation modalities and to facilitate the meaningful participation of Indigenous Peoples in its work and discussions, in particular regarding issues affecting them, such as the dialogue with the Expert Mechanism and the Special Rapporteur on the rights of Indigenous Peoples.

20. The Chair of the Permanent Forum on Indigenous Issues, Darío José Mejía Montalvo, noted that the expert workshop was a new opportunity for dialogue on the issue of the participation of Indigenous Peoples in the work of the United Nations. Indigenous Peoples still faced difficulties in obtaining access to several United Nations mechanisms that did not explicitly address Indigenous issues but whose subjects of discussion and associated decisions had an impact on Indigenous Peoples' rights. It was anachronistic, in particular after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples,

[10] A/HRC/44/35.
[11] A/HRC/49/69.

that Indigenous Peoples could only be accredited by non-governmental organizations. The Permanent Forum was particularly interested in the formal hearings on the participation of Indigenous Peoples in the work of the United Nations, which were being organized by the President of the General Assembly and would be held during the twenty-second session of the Permanent Forum in April 2023. He suggested that the President of the General Assembly should invite the Council and OHCHR to present the recommendations resulting from the expert workshop and that efforts should be made to promote regional dialogues with Indigenous Peoples. The participation of Indigenous women and youth was particularly important.

21. In his video message, the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, recalled general comment No. 25 (1996) of the Human Rights Committee on participation in public affairs and the right to vote, noting that Indigenous Peoples had historically been excluded from participation in public affairs, with the consequence that their views and needs had not been adequately addressed in decision-making processes at the national, regional and international levels. Indigenous Peoples had the right to participate actively in the work of the Council and so any selection mechanism, selection criteria and modalities for participation that would be decided upon should take into consideration that many Indigenous organizations, groups and networks were not legally recognized at the national level. He noted the need to ensure equal and fair participation through geographical balance, gender diversity, the participation of Indigenous youth, older persons and persons with disabilities, and by disseminating information in Indigenous languages.

V. Summary of the proceedings

22. Participants defined the expert workshop as being of historical importance and expressed the hope that it would create momentum for the effective and meaningful participation of Indigenous Peoples as an integral component in guaranteeing the promotion and respect of human rights. They reiterated that the Council could set an example for the entire United Nations system. Some participants noted that nothing in the institution-building package[12] hindered the participation of Indigenous Peoples in the work of the Council.

23. Many experts and participants referred to the Alta Outcome Document,[13] in particular with regard to the promotion of the full and effective participation of Indigenous Peoples in decisions that affect them, and to the outcome document of the Dialogue Meeting on Enhanced Indigenous Peoples' Participation at the United Nations organized by Indigenous organizations and institutions and held in Quito from 27 to 30 January 2020.

24. Participants referred both to the United Nations Declaration on the Rights of Indigenous Peoples in general and to specific provisions of the Declaration. The latter included the preamble; article 1 recognizing Indigenous Peoples as having the right to full enjoyment of international human rights law; article 3 on the right to self-determination; article 4 on the right to autonomy or self-government; article 18 on the right of Indigenous Peoples to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures; article 19 on the need for States to consult and cooperate in good faith with the Indigenous Peoples concerned through their own representatives and institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; article 33 on the right of Indigenous Peoples to determine their own identity; article 37 on the right of Indigenous Peoples to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors; article 38 on the need for States to take appropriate measures, including legislative measures, to achieve the ends of the Declaration; article 39 on the right of Indigenous Peoples to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in the

[12] Human Rights Council resolution 5/1.

[13] A/67/994, annex.

Declaration; and article 41 on the need for the United Nations and its bodies to establish ways and means of ensuring participation of Indigenous Peoples on issues affecting them.

25. Some participants referred to other provisions of international law, including the Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169), adopted by the International Labour Organization; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; as well as general comments and jurisprudence of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

26. Participants recalled the *Study of the Problem of Discrimination Against Indigenous Populations* by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, José R. Martínez Cobo;[14] the System-wide action plan for ensuring a coherent approach to achieving the end of the United Nations Declaration on the Rights of Indigenous Peoples;[15] "Building an inclusive, sustainable and resilient future with Indigenous Peoples: a call to action" (November 2020), endorsed by the United Nations System Chief Executives Board for Coordination; "The highest aspiration: a call to action for human rights", launched by the Secretary-General on 24 February 2020; and the report of the Secretary-General[16] of 27 July 2020.

27. The need to take into account a gender and a multigenerational perspective, as well as the participation of Indigenous Peoples living in vulnerable situations were mentioned throughout the expert workshop.

A. Venues of participation

28. The discussion on venues of participation was held on 21 November 2022, from 3 to 6 p.m., and was facilitated by Ms. Wallet Aboubakrine.

29. Mr. Melezer, the Indigenous Peoples' representative from the sociocultural region of the Pacific, introduced the topic. He noted that, while the expert workshop concerned the work of the Human Rights Council in particular, the observations made could be extended to the General Assembly and to the United Nations system in general. In the transition from the Commission on Human Rights to the Human Rights Council, Indigenous Peoples had lost space for participation and there were currently shortfalls ranging from the number of agenda items that they could have access to the issues that they could address and the limited amount of speaking time available to them. He concluded that Indigenous Peoples' representatives should be able to access all venues of participation in the Council and be granted a separate status, different from that of a non-governmental organization, in recognition of the right to self-determination.

30. In the exchange among experts that followed, it was noted that, although the United Nations system was built on States, the world was made up of peoples, including Indigenous Peoples who lived as nations across State borders and the number of whom was difficult to estimate because of a lack of disaggregated data in that regard. One expert noted that in Africa there were Indigenous Peoples' representatives but no Indigenous Peoples' representative institutions, as such institutions had been destroyed by colonization. Experts agreed that all agenda items of the Council were relevant to Indigenous Peoples, who should be allowed to participate in all decision-making matters affecting them. They reiterated that Indigenous Peoples' representatives and institutions were not non-governmental organizations and called on the Council to establish a new separate status for Indigenous Peoples' representatives and institutions, permitting them to participate in the work of the Council without having to be accredited by non-governmental organizations with Economic and Social Council status. The new status should in no way undermine existing acquired rights. Concerning the venues of participation, experts agreed that, at a minimum, Indigenous Peoples' representatives and

[14] E/CN.4/Sub.2/1986/7, E/CN.4/Sub.2/1986/7/Add.1, E/CN.4/Sub.2/1986/7/Add.2, E/CN.4/Sub.2/1986/7/Add.3 and E/CN.4/Sub.2/1986/7/Add.4.

[15] E/C.19/2016/5.

[16] A/75/255.

institutions should be allowed access to all venues to which non-governmental organizations had access, and ideally to all venues that they considered affecting their interests.

31. Participants noted that the Council had a demonstrated ability to change and should establish a separate status for Indigenous Peoples' representatives and institutions. Several participants called for permanent observer status for Indigenous Peoples' representatives and institutions, noting that it would not affect or diminish the status of other permanent observers. All participants who spoke on the issue agreed that Indigenous Peoples should be allowed access to all meetings and sessions of the Council, and to its subsidiary bodies, mechanisms and working groups, including but not limited to the interactive dialogue with the Special Rapporteur on the rights of Indigenous Peoples and other special procedure mandate holders; the Expert Mechanism on the Rights of Indigenous Peoples and other mechanisms; intersessional activities, panels, discussions and dialogues organized by the Council; informal negotiations on the drafting of resolutions; and parallel events. Some participants mentioned the modalities of participation of the national human rights institutions as a positive example to be considered. Others encouraged States to include Indigenous Peoples' representative institutions in their delegations until a separate status was established. Many participants raised the issue of the funding necessary for participation in person and called for more resources to be allocated to the United Nations Voluntary Fund for Indigenous Peoples.

B. Participation modalities

32. The discussion on participation modalities was held on 22 November 2022, from 10 a.m. to 1 p.m., and facilitated by an Indigenous Peoples' representative, Johnson Cerda.[17]

33. The Indigenous Peoples' representative from the sociocultural region of the Arctic, Ms. Olsvig, introduced the topic. She noted that the process of enhancing the participation of Indigenous Peoples concerned the entire United Nations system. There was much diversity among Indigenous Peoples but they still managed to find unity in the principles expressed in the Alta Outcome Document and in the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, in particular those of self-determination and self-identification. Indigenous Peoples differed from minorities, local communities and non-governmental organizations because, as peoples, they had existed before States and borders, so it was a complex challenge to represent them within existing structures. Indigenous Peoples' representatives and institutions took many forms, and further discussion was required regarding how to recognize them appropriately. For that reason, there should be venues in the Council specifically devoted to Indigenous Peoples' representative institutions to reflect the complexity of their situation. She drew attention to the Arctic Council as a model for how Indigenous Peoples could decide their own representation. Another important matter for discussion was how to ensure that both governing institutions and rights holders would be represented at the Council. Broad participation modalities to accommodate all Indigenous Peoples in their diversity should be considered and States and United Nations system should take a stronger stance against reprisals. It was important to consider whether representation would be based on the seven Indigenous sociocultural regions or by individuals. She proposed placing Indigenous Peoples' representatives at the top of the list of speakers on those agenda items that Indigenous Peoples considered relevant to themselves.

34. In the discussion that followed, experts noted the importance of a partnership between States and Indigenous Peoples for finding new modalities of participation. It was also noted that the Council was able to take decisions in that regard. One expert noted that granting a separate status to Indigenous Peoples would also allow them to participate in the decisions related to the modalities to be developed. Experts considered important the representation of the seven Indigenous sociocultural regions, stressed the autonomy of each region in choosing its representatives and, to that effect, noted the underlying need for networks at regional level. Some experts elaborated on the possibility of having seven seats on the Council, one for each Indigenous sociocultural region, whereas others noted that the proposal could present challenges and needed to be considered thoroughly, including in terms of self-determination.

[17] Mr. Cerda replaced Ms. Wallet Aboubakrine, who was unable to attend the meeting.

Proposed new modalities of participation were a rotating list of speakers, in which priority was given to the category of speakers that was most affected by the agenda item discussed, or a reverse list of speakers, in which Indigenous Peoples would speak before others on matters affecting them. Experts noted that Indigenous Peoples should also take full advantage of the existing possibilities for participation, including by applying to special procedure mandate holder positions. Until new modalities of participation entered into force, States were urged to include Indigenous Peoples in their delegations and to include contributions from Indigenous Peoples' representatives and institutions in their written submissions and reports, for example in an annex, including in the national reports submitted for the universal periodic review.

35. Participants highlighted that, in the spirit of the Alta Outcome Document, the process of granting a separate status should focus on the participation of Indigenous Peoples' representative institutions rather than on regional representation as such. The existing limitations to the participation of Indigenous Peoples were reiterated. Proposals for new modalities of participation included equal and fair speaking time, prioritization of Indigenous Peoples in the list of speakers on matters affecting them, reserved seating arrangements, the possibility of submitting written contributions, participation in informal negotiations regarding the drafting of resolutions, acting as co-facilitators and organizing side events. Some participants supported the idea of Indigenous Peoples being able to co-sponsor and submit resolutions whereas others recalled that the Council was an intergovernmental body and the modalities of participation should be in line with its current structure in which Indigenous Peoples should have the same status and level of participation as other non-governmental entities. It was proposed to take stock of participation gaps in the Council, as well as identify good models of participation that could be replicated. A number of participants noted that such a stocktaking exercise should not further delay the process of granting a separate status to Indigenous Peoples' representatives and institutions.

C. Selection criteria

36. The discussion on selection criteria started on 22 November 2022, between 3 and 6 p.m., facilitated by Ms. Mørch Smith, and continued on 23 November 2022, between 10 a.m. and 1 p.m., facilitated by Ms. Wallet Aboubakrine.

37. The Indigenous Peoples' representative from the sociocultural region of North America, Mr. Deer, introduced the topic. He recalled the timeless relationship of Indigenous Peoples with land, environment and nature. Indigenous Peoples had been victims of exploitation that had led to their dispossession and, in some cases, annihilation, and consideration as inferior by ethnic majorities, and so Indigenous Peoples were fighting for equality. Criteria for obtaining a separate status of Indigenous Peoples representative institutions accredited to the Council would include their relationship to land, and having their own language, culture, spirituality and laws, and the capacity to enforce those laws. Those criteria may not be all met in every case, taking into consideration the differences among regions. Indigenous Peoples had the capacity to recognize each other and were able to distinguish genuine representative institutions from other entities such as representatives of minorities or local communities that might not enjoy the right to self-determination.

38. In the discussion that followed, experts agreed to refer to "accreditation criteria" instead of "selection criteria". Indigenous Peoples' representative institutions could take many forms, just as States had different forms of governance. It was recognized that defining accreditation criteria would be complex, given the substantial differences existing in the seven Indigenous sociocultural regions. Representatives from each region would be best placed to identify those who qualified as Indigenous Peoples. In that respect, the importance of engagement at the regional level to establish regional-based representation was underlined. Some participants warned against stringent criteria that could create self-imposed barriers to participation. Experts agreed that reciprocal recognition among Indigenous Peoples and their ancestral links to the land remained fundamental criteria. Experts concurred that State recognition would not constitute a criterion necessary for accreditation.

39. Participants shared experiences from their respective Indigenous sociocultural regions and State representatives referred to initiatives, institutional structures and legal provisions regarding Indigenous Peoples in their jurisdictions, confirming the multiplicity of forms of representation of Indigenous Peoples worldwide. Many noted that self-identification, while necessary, could not be the sole criterion to determine the eligibility of applicants for a separate status as Indigenous Peoples' representatives and institutions. Applicants should be of Indigenous descent from an Indigenous People with ancestral links to the land, culture, language, history, territory, institutional structures and forms of self-government. They should present appropriate credentials, represent duly established forms of institution and be genuinely representative of the Indigenous Peoples in question. Their legitimacy must be recognized by their own Indigenous constituency and by reciprocal recognition by other Indigenous Peoples. Differing opinions were expressed on the criterion of State recognition; some considered it necessary, some as one of the factors for consideration but not a requirement and others rejected it. One State representative noted the difficulties arising from the differing definitions and forms of representative bodies, which also raised technical issues. Participants acknowledged that establishing a link to the ancestral land for those who had migrated, as a criterion, required further discussion.

D. Selection mechanism

40. The discussion on a selection mechanism was held on 23 November 2022, from 3 to 6 p.m., and was facilitated by Ms. Mørch Smith.

41. The Indigenous representative from the sociocultural region of Central and South America, and the Caribbean, Mr. Chiari, introduced the topic by presenting an overview of the Guna Cultural General Congress and the Guna General Congress, representing the Guna Peoples who lived in communities in Panama and Colombia. The Guna Cultural General Congress discussed spiritual, cultural and heritage matters while the Guna General Congress was the political and administrative entity of the Guna Yala. The latter held a regular session every six months, as well as extraordinary sessions when necessary and if at least two-thirds of the communities requested one. Every community was represented by one chief and four representatives, with the chief exercising the right to vote. Every proposal was discussed at the community level for one month and was then followed by an eighteen-month decision-making process. Once the Congress made a decision, it was considered binding. In addition, the Guna Yala Assembly and the Guna Youth Congress met regularly.

42. Experts reiterated that, instead of a "selection mechanism", it would be more appropriate to refer to an "accreditation mechanism", which would determine the eligibility of Indigenous Peoples' representatives and institutions for a new, separate status for their participation in the Council. Many favoured a procedural mechanism, which would allow for more flexibility and dynamism, rather than an established body. Most experts supported the idea of a mechanism composed of Indigenous Peoples only. One expert proposed a mechanism composed of a majority of Indigenous Peoples but also including State representatives. The mandate of the members should be staggered to ensure continuity of knowledge and expertise in the mechanism. The possibility of holding regional preparatory meetings for the selection of members of the mechanism was raised, as was the importance of respecting balance among Indigenous sociocultural regions. Specific regional expertise and knowledge should be taken into account when considering applicants for an accreditation mechanism. It was, however, underscored that members of the mechanism should not be involved in decisions concerning their own entities. The mechanism would draft its own terms of reference. Some experts stressed the importance of consensus in the decision-making of the mechanism, others noted that consensus might slow down, or even block, the process of accreditation and that a simple majority should suffice. The mechanism would also provide for a procedure to appeal its decisions. The accreditation process of national human rights institutions, with the exclusion of the element of State recognition, was considered a good model.

43. Participants supported the views expressed by the experts on the composition and functions of the accreditation mechanism, which should be independent from other existing bodies or mechanisms, such as the Committee on Non-Governmental Organizations of the

Economic and Social Council and the Permanent Forum on Indigenous Issues. Echoing the views of the experts, some participants supported a mechanism led exclusively by Indigenous Peoples' representatives, others considered appropriate a composition with a majority of Indigenous Peoples' representatives. There was agreement that, should States be part of the accreditation mechanism, they would have no veto power on accreditation. Speakers agreed that the mechanism should base its work on the fundamental principles and rights of self-identification, self-determination, and free, prior and informed consent. Indigenous Peoples themselves would check collectively that those principles were being respected. The mechanism should examine the applicants against objective criteria and should be careful not to delegitimize any applicant, as its role would be to determine only the eligibility for participation in the work of the Council and not the status as Indigenous Peoples. It should be accessible and effective and provide for maximum inclusivity and opportunity for submission of applications; it should be timely in taking final decisions, without the need of validation from further instances. Participants agreed with the experts that the mechanism, in its decision-making, should strive for consensus but that consensus should not be a requirement, in order to avoid the possibility of a veto. The mechanism would provide an appeal procedure limited to the examination of disputes arising from the rejection of the status. Many highlighted the need for the mechanism to be fully resourced and some envisaged the possibility of providing the mechanism with its own secretariat, in particular if the mechanism of the Subcommittee on Accreditation of the Global Alliance for the National Human Rights Institutions or the accreditation process of the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform, were considered suitable models.

E. Recommendations

44. On 24 November 2022, the experts nominated by, or representing, States and Indigenous Peoples, taking into consideration contributions from all participants, further elaborated on the proposals and ideas from the above-mentioned discussions. Ms. Wallet Aboubakrine facilitated the first part of the meeting, from 10 a.m. to 1 p.m., and Ms. Mørch Smith facilitated the second part, from 3 to 4.30 p.m.

45. The recommendations agreed upon during the final discussion, together with those submitted through the written submissions, as well as a timeline for their implementation, are included in section VII of the present report and will be presented to the Human Rights Council, States, the United Nations system and relevant stakeholders for their consideration and implementation.

VI. Closing of the expert workshop

46. In her closing remarks, Ms. Mørch Smith noted the strong commitment to the rights of Indigenous Peoples expressed throughout the expert workshop, during which principles, proposals and details about possible ways of enhancing the participation of Indigenous Peoples in the work of the Council had been discussed with a view to strengthening the work of the United Nations, leading to better processes and decisions. During the discussions, participants had reflected on a new status for Indigenous Peoples, the principles of self-determination and self-identification, regional balance among the seven sociocultural regions, venues and level of participation in the work of the Council, an accreditation mechanism, and the need for support and capacity-building. She noted that the expert workshop was part of a longer process on Indigenous Peoples' participation and that the proposals and recommendations stemming from it would help define the way forward.

47. Ms. Wallet Aboubakrine noted that the process of granting Indigenous Peoples the possibility of participating in the work of the Council with robust modalities was a delicate one. She noted that consensus had emerged on the necessity of a new, separate status for Indigenous Peoples, based on the principles expressed in the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent, and in recognition of their right to self-determination. There had also been consensus that the accreditation mechanism should be transparent, inclusive in its recognition of the diversity of Indigenous Peoples' representatives and institutions, and led by Indigenous Peoples

themselves. She noted that Indigenous Peoples should be allowed to participate in all venues of the Council with the same modalities as other participants, except for the right to vote. She stressed the importance of the Council continuing the dialogue on enhanced participation of Indigenous Peoples in a timely manner. She invited the Council to consider the summary report of the expert workshop during 2023; to establish a working group led by two co-facilitators, one from States and one from Indigenous Peoples, to be nominated by the President of the Council; and to finalize the special status of Indigenous Peoples by 2024. The process should be supported by funds both from States and from the United Nations system.

48. The Chief of the Indigenous Peoples and Minorities Section of OHCHR, Hernán Vales, thanked the Council for having entrusted the organization of such a landmark expert workshop to OHCHR and thanked all participants for their contributions. He noted the open and respectful exchanges that had led to notable convergence on a number of recommendations to be presented to the Council prior to its fifty-third session. He reaffirmed the engagement of the Office in the promotion and protection of the rights of Indigenous Peoples, including by providing support to the United Nations Voluntary Fund for Indigenous Peoples and the Indigenous Fellowship Programme as ways to ensure participation and transmission of knowledge to the new generations of Indigenous Peoples' leaders.

49. The expert workshop was closed with a blessing and prayer said by Jenifer Lasimbang of the Kadazan People.

VII. Recommendations from the discussions

50. **All measures taken to enhance the participation of Indigenous Peoples in the work of the Human Rights Council must be rooted in the principles affirmed in the Charter of the United Nations, in the United Nations Declaration on the Rights of Indigenous Peoples, and in relevant provisions of international law, in particular those relating to the right of self-identification, the right of self-determination, and the right to free, prior and informed consent.**

51. **Nothing in the present report nor in the implementation of the present recommendations should be interpreted as affording a lesser degree of participation, nor as being to the detriment of existing modalities of participation or diminishing in any way the acquired modalities of participation of Indigenous Peoples' representatives and institutions under applicable rules and standards.**

52. **A new status, distinct from any status associated with accreditation under the Economic and Social Council, should be established for the accreditation and meaningful and effective participation of Indigenous Peoples' representatives and institutions in the work of the Human Rights Council. The status should be separate to that accorded to national human rights institutions, local communities, non-governmental organizations and civil society institutions.**

53. **Indigenous Peoples' representatives and institutions should be able to participate in all venues of the Human Rights Council that Indigenous Peoples themselves judge to affect their interests. At a minimum, they should be allowed to participate in regular and special sessions of the Council, interactive dialogues with the Special Rapporteur on the rights of Indigenous Peoples and other special procedure mandate holders, as well as with the Expert Mechanism on the Rights of Indigenous Peoples and other relevant mechanisms, and in panel discussions, universal periodic review meetings, informal consultations on resolutions and parallel events.**

54. **Indigenous Peoples' representatives and institutions should be granted arrangements and modalities that allow for their effective and meaningful participation in the work of the Council. Participation modalities should include the right to speak for an equal and fair amount of time, to be prioritized in lists of speakers relating to Indigenous Peoples' specific venues, to make written submissions, to take part in informal negotiations regarding resolutions, to have reserved seats in all venues of the**

Human Rights Council, to participate as co-facilitators in events organized by the Council and to organize parallel and side events.

55. **The wording "accreditation criteria" and "accreditation mechanism" should be used instead of "selection criteria" and "selection mechanism". A new, independent accreditation mechanism should be created to determine the eligibility of Indigenous Peoples' representatives and institutions for the Human Rights Council. It should be led by, and consist of, a majority of self-selected Indigenous Peoples' representatives from the seven sociocultural regions. If States parties are part of the accreditation mechanism, they should have no power of veto. The work of the accreditation mechanism should be transparent, independent, inclusive (by taking into account the diversity of Indigenous Peoples' representatives and institutions), based on the fundamental principles of self-determination and self-identification, and not undermine existing means of participation. The mechanism should take decisions by simple majority that are final and not subject to validation by other bodies. Organizations whose requests are rejected should be provided with the reasons for the rejection. The mechanism should include an appeal procedure to address complaints arising from issues relating to accreditation rejections. The accreditation procedure should be easy to understand, accessible and widely publicized to allow for maximum participation of Indigenous Peoples' representatives and institutions in the work of the Human Rights Council.**

56. **Accreditation criteria should be objective, consistent, transparent, based on the rights of self-identification and self-determination, and flexible to account for the diversity of forms of Indigenous Peoples' representatives and institutions including, but not limited to, Indigenous governments, Indigenous parliaments, councils, assemblies and traditional authorities. Criteria could include but are not limited to: being descended from Indigenous Peoples; identification as belonging to an Indigenous People and being accepted as such by that Indigenous People; the nature of the representativeness of, and the accountability to, the Indigenous People represented; due establishment of the Indigenous Peoples' representative institution; and ability to participate in the processes and mechanisms of United Nations bodies.**

57. **As an interim measure and until the establishment of a new status for the accreditation of Indigenous Peoples' representatives and institutions, the Human Rights Council should allow the participation of Indigenous Peoples' representatives and institutions and organizations without Economic and Social Council consultative status in all discussions concerning the enhanced participation of Indigenous Peoples in its work.**

58. **The President of the Human Rights Council should appoint co-facilitators, one nominated by States and one by Indigenous Peoples, to conduct on his behalf formal and informal consultations in an open, inclusive, transparent and timely manner in order to facilitate the process leading to the establishment of a new status to allow the participation of Indigenous Peoples' representatives and institutions in the Human Rights Council and discuss all necessary institutional issues and procedural steps.**

59. **The following timeline for the implementation of the present recommendations should be observed:**

(a) **The Human Rights Council should adopt a resolution at its fifty-fourth session to launch the formal consultations on the enhanced participation of Indigenous Peoples' representatives and institutions in its work, in particular on the establishment of a new separate status, venues of participation, participation modalities, accreditation criteria and an accreditation mechanism;**

(b) **The consultations led by the co-facilitators appointed by the President of the Human Rights Council should be concluded by September 2024;**

(c) **The Human Rights Council should adopt a stand-alone resolution, at its fifty-seventh session, on the enhanced participation of Indigenous Peoples' representatives and institutions in its work by establishing a new separate status for Indigenous Peoples' representatives and institutions and detailing venues of**

participations, participation modalities, accreditation criteria and the accreditation mechanism, to coincide with the tenth anniversary of the World Conference on Indigenous Peoples.

60. **On the basis of previous stocktaking exercises included in the reports of the Secretary-General of 2 July 2012[18] and 27 July 2020[19] and the note by the President of the General Assembly of 25 July 2016,[20] a compilation of existing procedures on the participation of Indigenous Peoples at the United Nations, highlighting existing gaps and good practices, should be conducted, without delaying the timeline set out above.**

61. **Regional consultations and dialogues on the enhanced participation of Indigenous Peoples may be considered as an ongoing process to ensure that voices from all Indigenous sociocultural regions are heard, on the understanding that they would not hinder the timeline set out above.**

62. **States should consider taking measures to enhance the participation of Indigenous Peoples in the work of the Council by accrediting Indigenous Peoples' representatives and institutions in their delegations, including contributions by Indigenous Peoples' representatives and institutions as annexes to their written submissions and reports, inviting Indigenous Peoples to informal consultations on resolutions, and engaging formally and informally with Indigenous Peoples at every stage of the consultation process, with a view to accelerating the attainment of a common position.**

63. **States should devise communication strategies for the effective access to information by Indigenous Peoples and should effectively disseminate, in accessible formats and Indigenous languages, the outcomes of decisions made at international forums, including recommendations of the Human Rights Council, in order to maximize the opportunities for participation by Indigenous Peoples.**

64. **The enhanced participation of Indigenous Peoples in the work of the Council may increase the risk of acts of intimidation and reprisals against them. Mechanisms for reporting all acts of intimidation and reprisals should be strengthened so that such acts can be addressed and the safety and security of Indigenous Peoples' representatives, their family members, associates and legal representatives is increased. Further strengthening of State measures to effectively prevent, protect, investigate and prosecute such acts against Indigenous Peoples' representatives and institutions participating in the work of the Human Rights Council remains a priority.**

65. **The enhanced participation of Indigenous women and girls in the work of the Human Rights Council should, in particular, be facilitated, with a view to promoting and protecting their rights and preventing their exclusion from high-level decision-making and representation.**

66. **Sufficient resources, including financial resources, should be allocated by States to implement all measures necessary for the enhanced participation of Indigenous Peoples' representatives and institutions in the work of the Human Rights Council, including by contributing to the United Nations Voluntary Fund for Indigenous Peoples.**

67. **States should be provided with technical cooperation and capacity-building to build and strengthen national structures that have a direct impact on the participation of Indigenous Peoples in decision-making that affects them. Indigenous Peoples should also be provided with technical cooperation and capacity-building to strengthen their capacities to engage with international human rights mechanisms in order to enhance their participation in meetings and forums of the United Nations system. Targeted human rights education programmes, in particular at the grass-roots level, should also be developed or revived, and implemented.**

[18] A/HRC/21/24.
[19] A/75/255.
[20] A/70/990.

Annex

List of speakers in alphabetical order

Opening segment, Monday 21 November 2022, a.m.

African Indigenous Peoples Network,

Asia Indigenous Peoples Pact (AIPP),

Bolivia (Plurinational State of),

Canada,

Centre for Support of Indigenous Peoples of the North (CSIPN),

Finland,

Global Home for Indigenous Peoples (GH4IP),

Indigenous Coordinating Body (ICB),

International Human Rights Association of American Minorities (IHRAAM),

International Indian Treaty Council (IITC),

Lithuania,

New Zealand,

Norway,

Parlamento Rapa Nui.

Peru,

Sami Parliament in Finland,

South Africa,

the Russian Federation,

Ukraine,

United States of America,

Venezuela (Bolivarian Republic of).

Venues of participation, Monday 21 November 2022, p.m.

Asia Indigenous Peoples Pact (AIPP),

Australia,

Bolivia (Plurinational State of),

British Columbia Treaty Commission (BCTC),

Canada,

Coalition for the Human Rights of Indigenous Peoples,

Coporwa,

Finland,

Global Home for Indigenous Peoples (GH4IP),

Grand Council of the Crees,

Gti-amasau,

Guatemala,

International Human Rights Association of American Minorities (IHRAAM),

Mexico,

National Congress of American Indians (NCAI),

Saka Mese Nusa Allifuru,

Sami Parliament in Finland,

Samusa Santa,

Union of Communities of Indigenous Peoples of the North of Evenkia.

Modalities of participation, Tuesday 22 November 2022, a.m.

African Indigenous Peoples Network,

Asia Indigenous Peoples Pact (AIPP),

Australia,

British Columbia Treaty Commission (BCTC),

Canada,

Coalition of the Human Rights of Indigenous Peoples,

Ecuador,

Finland,

Gti-amasau,

Guatemala,

International Committee of Indigenous Peoples of Russia,

International Human Rights Association of American Minorities (IHRAAM),

International Indian Treaty Council (IICT),

Joint statement of Te ara whatu, and Dewan Adat Papua, Saniri Aliperu, Saka Mese Nusa Alifaru,

National Congress of American Indians (NCAI),

Sami parliament in Finland,

South Africa,

the Russian Federation,

United States of America.

Selection criteria, Tuesday 22 November 2022, p.m.

African Caucus,

African Indigenous Foundation for Energy and Sustainable Development (AIFES),

Asia Indigenous Peoples Pact (AIPP),

Australia,

British Columbia Treaty Commission (BCTC),

Canada,

Centre for Support of Indigenous Peoples of the North (CSIPN),

Comuna Santa Elena,

Finland,

Global Home for Indigenous Peoples (GH4IP),

Gti-amasua,

Guatemala,

Honduras,

International Human Rights Association of American Minorities (IHRAAM),

International Indian Treaty Council (IITC),

Ka Kuxtal Much Meyaj,

Norway,

Organización de Mujeres Indígenas de Panamá

Parlamento Rapa Nui,

Philippines,

Sami Parliament in Finland,

San Indigenous Communities,

Saniri Alifuru,

Soultien African Region,

South Africa,

the Russian Federation,

the United States of America.

Selection criteria, Wednesday 23 November 2022, a.m.

African Caucus,

Alkalges Association,

Amnesty International (AI),

Asia Indigenous Peoples Pact (AIPP),

Canada,

Coalition for the Human Rights of Indigenous Peoples,

Ecuador,

Grand Council of the Crees,

Gti-amasau,

Guatemala,

International Committee of Indigenous Peoples of Russia,

International Human Rights Association of American Minorities (IHRAAM),

International Indian Treaty Council (IITC),

Joint statement of Saniri Alifuru, Dewan Adat Papua, Saka Mese Nusa Alifuru,

National Congress of American Indian,

Pacific Indigenous Women,

Parlamento Rapa Nui,

Sami Parliament in Finland,

Samusa Santa,

the Russian Federation,

Union of Communities of Indigenous Peoples of the North of Evenkia.

Selection mechanism, Wednesday 23 November 2022, p.m.

African Caucus,

Alkalges Association,

Amnesty International,

Asia Indigenous Peoples Pact,

Coalition for the Human Rights of Indigenous Peoples,

Ecuador,

Grand Council of the Crees,

Gti-amasau,

Guatemala,

International Committee of Indigenous Peoples of Russia,

International Human Rights Association of American Minorities (IHRAAM,)

International Indian Treaty Council,

Joint Statement of Saniri Alifuru, Dewan Adat Papua and Saka Mese Nusa Alifuru,

National Congress of American Indian,

Pacific Indigenous Women,

Parlamento Rapa Nui,

Russian Federation,

Samusa Santa,

The Sami Parliament,

Union of Communities of Indigenous Peoples of the North of Evenkia.

Recommendations, Thursday 24 November 2022, a.m. and p.m.

African Caucus,

Asia Indigenous Peoples Pact (AIPP),

Australia,

Canada,

China,

Ecuador,

Global Home for Indigenous Peoples (GH4IP),

Gti-Amasau,

Indigenous Peoples Organizations in Australia,

International Human Rights Association of American Minorities (IHRAAM),

International Indian Treaty Council (IITC),

International Work for Indigenous Affairs,

Joint Statement of Pacific Indigenous Women Network, Dewan Adat Papua, Saniru Alifuru, Saka Mese Nusa Alifuru, Kahungunu Rangatahi and Rapa Nui Parliament,

Joint Statement on behalf of Saniri Alifuru, Dewan Adat Papua and Saka Mese Nusa Alifuru,

Kayungnunu Tribe,

Mexico,

National Congress of American Indian,

Pacific Indigenous Women Network,

Sami Parliament in Finland,

South Africa,

Toledo Alcades Association Belize,

Union Community of Indigenous Peoples of North Evenkia, Winnemen Wintu Tribe.