



General Assembly

Distr.: General
2 July 2012

Original: English

Human Rights Council

Twenty-first session

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

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

Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them

Report of the Secretary-General

Summary

In the present report, ways and means of promoting participation at the United Nations of indigenous peoples' representatives are described. First, a summary is presented of reasons why indigenous peoples' representatives may find it difficult to participate in the United Nations and why their participation is desirable. Second, details are provided of existing United Nations rules and practices in relation to the participation of indigenous peoples' representatives and non-State actors. The report includes a description of arrangements adopted to enable the participation of indigenous peoples' representatives in bodies mandated by the United Nations that focus specifically on indigenous peoples' issues, irrespective of whether they have consultative status with the Economic and Social Council as non-governmental organizations. Third, possible ways forward in terms of developing a procedure to enable the participation of indigenous peoples' representatives in the United Nations are outlined. Lastly, issues that would need to be considered in order to implement a procedure to enable the participation of indigenous peoples' representatives in the United Nations are discussed.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–6	3
II. Need to enable participation by indigenous peoples’ representatives in the United Nations	7–13	4
A. Qualitative and functional differences between indigenous peoples’ organizations and non-governmental organizations.....	7–9	4
B. Difficulties faced by indigenous peoples’ organizations in meeting the criteria for consultative status with the Economic and Social Council	10–11	5
C. Functional advantages of indigenous peoples’ participation in the United Nations	12–13	6
III. Existing procedural rules regulating indigenous peoples’ participation in United Nations bodies focused especially on indigenous peoples’ issues.....	14–30	6
A. Permanent Forum on Indigenous Issues	14–17	6
B. Expert Mechanism on the Rights of Indigenous Peoples.....	18–22	7
C. Working Group on Indigenous Populations (1982–2006)	23	8
D. Commission on Human Rights working group on a United Nations draft declaration on the rights of indigenous peoples (1995–2006).....	24–27	8
E. United Nations Voluntary Fund for Indigenous Populations	28–30	9
IV. Existing procedural rules regulating participation in United Nations bodies generally	31–55	9
A. General Assembly.....	33–34	10
B. Economic and Social Council.....	35–47	10
C. Human Rights Council	48–54	12
D. Participation of indigenous peoples’ organizations in United Nations system organizations.....	55	13
V. Possible steps to promote the participation at the United Nations of recognized indigenous peoples’ representatives.....	56–59	14
VI. Issues for consideration.....	60–65	15
A. Eligibility for accreditation as an indigenous peoples’ representative.....	61–62	15
B. Body to determine the eligibility of indigenous peoples’ representatives for accreditation	63	15
C. Details of the process, such as information required to be submitted to the accrediting body	64	16
D. Meaningful and effective participation by indigenous peoples’ representatives	65	16
VII. Conclusion	66	16

I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolution 18/8, in which the Council requested the Secretary-General, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs and other relevant parts of the Secretariat, to prepare a detailed document on the ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives on issues affecting them, given that they are not always organized as non-governmental organizations, and on how such participation might be structured, drawing from, among other things, the rules governing the participation in various United Nations bodies by non-governmental organizations (including Economic and Social Council resolution 1996/31) and by national human rights institutions (including Human Rights Council resolution 5/1 and Commission on Human Rights resolution 2005/74), and to present the document at its twenty-first session.

2. The Council's request is consistent with the United Nations Declaration on the Rights of Indigenous Peoples, which, in article 41, states that the organs and specialized agencies of the United Nations system and other intergovernmental organizations are to contribute to the full realization of the provisions of the Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. It also states that ways and means of ensuring participation of indigenous peoples on issues affecting them are to be established.

3. The Council's request follows a proposal to the Council from the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/18/43). In that proposal, the Expert Mechanism:

(a) Referred to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirms that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by them in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

(b) Also referred to article 41 of the Declaration, which establishes a duty for the United Nations to contribute to the full realization of the provisions of the Declaration, including through ways and means of ensuring participation of indigenous peoples on issues affecting them;

(c) Recognized that the United Nations consultative arrangements for non-State entities could prevent indigenous peoples' governance bodies and institutions, including traditional indigenous Governments, indigenous parliaments, assemblies and councils, from participating in decision-making processes at the United Nations, as they were not always organized as non-governmental organizations;

(d) Proposed that the Council should encourage the General Assembly to adopt, as a matter of urgency, appropriate permanent measures to ensure that indigenous peoples' governance bodies and institutions, including traditional indigenous Governments, indigenous parliaments, assemblies and councils, were able to participate at the United Nations as observers with, at a minimum, the same participatory rights as non-governmental organizations in consultative status with the Economic and Social Council.

4. The Expert Mechanism's proposal to the Council reflects its 2009-2011 study on indigenous peoples and the right to participate in decision-making (A/HRC/18/42), in which it stated that the United Nations should, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, establish a permanent mechanism or system for consultations with indigenous peoples' governance bodies, including indigenous

parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations.

5. The present report is informed by submissions received from States, indigenous peoples' organizations and non-governmental organizations in response to a call for contributions from OHCHR.¹ The United Nations Declaration on the Rights of Indigenous Peoples and other relevant international human rights instruments inform the approach taken herein.

6. The purpose of the present report is to consider methods of improving indigenous peoples' participation across the United Nations system, building on and strengthening established practices. It is prepared without prejudice to the existing mechanisms for indigenous peoples' participation at the United Nations, such as those established by the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples.

II. Need to enable participation by indigenous peoples' representatives in the United Nations

A. Qualitative and functional differences between indigenous peoples' organizations and non-governmental organizations

7. As the Expert Mechanism on the Rights of Indigenous Peoples has recognized, indigenous peoples' organizations are, in general, qualitatively and functionally different from non-governmental organizations in purpose, design and constituency. For example, indigenous peoples' organizations, even where they are not traditional in form, often represent indigenous individuals, families, extended families and collectives, who often share ancestry. As such, membership of an indigenous organization can be hereditary and, in some cases, based on indigenous legal and cultural norms. Many indigenous peoples' institutions have considerable responsibilities towards their members, including in relation to cultures, lands, territories and resources.

8. In many cases, indigenous peoples' organizations have been constitutionally, legally and/or politically acknowledged by the relevant State. For example, some States recognize the inherent and residual sovereignty of indigenous peoples and/or the continuing jurisdiction of indigenous peoples' governance institutions over their peoples. In others, the State enters into negotiations with indigenous authorities representing indigenous peoples to provide redress for indigenous peoples' historical grievances. In yet other cases, States and indigenous peoples have established modern legal and political institutions to recognize indigenous peoples' self-determination and/or self-government and also as a means to enable the representation of indigenous peoples in the State's broader governance structure, especially in relation to matters that specifically affect the indigenous peoples concerned. On the other hand, some indigenous peoples' organizations are not recognized by States, either because their status as indigenous peoples is denied or because the State does not recognize indigenous peoples' political institutions.

9. The purposes of many indigenous peoples' institutions may include public governance of their peoples and/or territories, often in accordance with indigenous laws and traditions, meaning that they cannot appropriately be defined as non-governing. As such, even where it might be possible for an indigenous peoples' organization to seek

¹ See www.ohchr.org/EN/Issues/IPeoples/Pages/ConsultationonIPparticipationintheUN.aspx.

accreditation as a non-governing organization, that organization may choose not to do so. The United Nations Declaration on the Rights of Indigenous Peoples expresses indigenous peoples' right to self-governance in a number of articles, including article 3, on the right to self-determination, and article 4, on the right to autonomy.

B. Difficulties faced by indigenous peoples' organizations in meeting the criteria for consultative status with the Economic and Social Council

10. Many indigenous peoples' organizations can find it difficult to meet the criteria for consultative status with the Economic and Social Council as non-governmental organizations. Two examples are given below:

(a) In resolution 1996/31, the Economic and Social Council set down principles to be applied in establishing consultative relations with non-governmental organizations. Pursuant to principle 9, a non-governmental organization should have "recognized standing" if it is to obtain consultative status. According to principle 10, it is to have an established headquarters, with an executive officer. In addition, the Internet application process requires an organization to provide a copy of its constitution/charter and/or statutes/by-laws and amendments to those documents (pursuant to principle 10) and a copy or certificate of registration. Furthermore, an organization should attest that it has been in existence for at least two years as at the date of receipt of the application by the Secretariat. An organization is also required to provide a financial statement or annual report.² Some indigenous peoples' organizations cannot register themselves owing to their unique constitution and others may not be recognized by the State. Some such organizations located within indigenous communities may have no headquarters and may not be organized in such a way as to have an executive officer. Moreover, oral traditions, rather than written documentation, may provide for the functioning of indigenous peoples' organizations;

(b) It is stated in principle 22 of resolution 1996/31 that, to be eligible for general consultative status, organizations must be broadly representative of major segments of society in a large number of countries in different regions of the world. Indigenous peoples' organizations that represent particular indigenous peoples are likely to be representative of an indigenous segment of society and rarely in a large number of countries in different regions of the world, however.

11. Where indigenous peoples' organizations have not obtained or are ineligible to obtain consultative status with the Economic and Social Council, or have not received an invitation to participate or have chosen not to participate as a part of a State delegation, these organizations have been unable to participate in important United Nations meetings and events on issues of direct relevance to them. Recent examples include sessions of the Human Rights Council and the Economic and Social Council, including in relation to the human rights issues facing indigenous peoples. For example, indigenous peoples' organizations without consultative status with the Economic and Social Council could not participate in a panel held during the eighteenth session of the Human Rights Council that focused on indigenous peoples' languages and cultures and the Human Rights Council's interactive dialogue with the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples. In the past, indigenous peoples' organizations that were not accredited to the Economic and Social Council could not enter the United Nations buildings in New York when the draft declaration on the rights of

² See <http://csonet.org/index.php?menu=34>.

indigenous peoples was being considered, meaning that only a limited number of people contributed to the discussions.

C. Functional advantages of indigenous peoples' participation in the United Nations

12. The advantages of participation by non-State actors in the United Nations are well recognized by the United Nations and more widely. In the report of the Panel of Eminent Persons on United Nations–Civil Society Relations (A/58/817), the Chair of the Panel described constructive engagement with civil society as a necessity.

13. The participation of indigenous peoples in the United Nations would address, in a practical way, their frequent marginalization and exclusion from decision-making processes on matters that affect them. As mentioned in the introduction to the present report, such participation is also called for in the United Nations Declaration on the Rights of Indigenous Peoples, as endorsed by the General Assembly, and explained in greater detail by the Expert Mechanism on the Rights of Indigenous Peoples. Indigenous peoples are best placed to authoritatively advise on their situation and the most appropriate methods to tackle the challenges that they face. Issues relevant to indigenous peoples are often addressed in general United Nations forums, beyond the bodies specifically focused on indigenous peoples. The participation of indigenous peoples' organizations in the United Nations that has been possible to date has facilitated the strengthening of cooperation between States and indigenous peoples in a peaceful and constructive fashion.

III. Existing procedural rules regulating indigenous peoples' participation in United Nations bodies focused especially on indigenous peoples' issues

A. Permanent Forum on Indigenous Issues

14. The Permanent Forum on Indigenous Issues was established by the Economic and Social Council in its resolution 2000/22. The Permanent Forum consists of 16 members, who serve in their personal capacity as independent experts on indigenous issues. Eight are nominated by Governments and elected by the Economic and Social Council, and eight are appointed by the President of the Council on the basis of selection processes undertaken by indigenous peoples in the seven indigenous-identified social and cultural regions of the world, to give broad representation to the world's indigenous peoples. The regions are Africa; Asia; Central and South America and the Caribbean; the Arctic; Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific, with one additional seat rotating among Africa, Asia, and Central and South America and the Caribbean. The Permanent Forum has a mandate to discuss indigenous issues within the purview of the Council relating to economic and social development, culture, the environment, education, health and human rights. Accordingly, the Permanent Forum will:

- (a) Provide expert advice and recommendations on indigenous issues to the Council, and to programmes, funds and agencies of the United Nations through the Council;
- (b) Raise awareness and promote the integration and coordination of activities related to indigenous issues within the United Nations system;
- (c) Prepare and disseminate information on indigenous issues.

15. The Permanent Forum holds annual sessions. In accordance with paragraph 1 of Economic and Social Council resolution 2000/22, States, United Nations bodies and organs, intergovernmental organizations and non-governmental organizations in consultative status with the Council may participate in the Permanent Forum as observers. Organizations of indigenous people may equally participate as observers in accordance with the procedures which have been applied in the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights.

16. The Secretariat of the Permanent Forum and the Civil Society and Outreach Unit of the Division for Social Policy and Development, part of the Department of Economic and Social Affairs, make practical arrangements for the pre-registration of civil society participants to attend the annual sessions of the Permanent Forum.

17. Five categories of participants can pre-register for the annual sessions: indigenous peoples' organizations; indigenous parliamentarians; non-governmental organizations in consultative status with the Economic and Social Council; national human rights institutions; and academic institutions. In accordance with the practice of the Permanent Forum, academic institutions have no right to speak.

B. Expert Mechanism on the Rights of Indigenous Peoples

18. Participation as observers in the Expert Mechanism on the Rights of Indigenous Peoples by organizations that are not accredited under the Economic and Social Council rules is permitted under Human Rights Council resolution 6/36, by which the Council also established the Expert Mechanism. It states:

The annual meeting of the expert mechanism shall be open to the participation, as observers, of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant national bodies, academics and experts on indigenous issues, non-governmental organizations in consultative status with the Economic and Social Council; the meeting shall also be open to indigenous peoples' organizations and non-governmental organizations, whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter of the United Nations, based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, through an open and transparent accreditation procedure in accordance with the rules of procedure of the Human Rights Council, which will provide for the timely information on participation and consultation with States concerned.

19. In practice, OHCHR, which manages the accreditation process, requests all non-State bodies to seek accreditation to the annual sessions of the Expert Mechanism and to complete the requisite accreditation form, irrespective of whether they are entitled to accreditation under, for example, Economic and Social Council accreditation procedures. Only those organizations that are not accredited under those or other such procedures, for example as national human rights institutions, must complete the forms to receive the security pass required to attend the annual sessions of the Expert Mechanism, however.

20. An organization requesting accreditation must submit a letter to OHCHR and complete an online form. In accordance with the questions on the form, it must:

- (a) Indicate whether it has Economic and Social Council accreditation;
- (b) Provide details about the organization;

(c) Answer the question “How does your organization, or yourself if you wish to participate as an academic or expert, want to contribute to the Expert Mechanism?”;

(d) Describe the organization’s work with regard to indigenous peoples’ issues.

21. OHCHR reviews information provided in accreditation letters provided by the organizations and the answers to the questions on the form to determine whether to grant accreditation, in particular with a view to ensuring that the activities of the requesting organizations relate to the mandate of the Expert Mechanism.

22. Except for the five members of the Expert Mechanism, all participants in the annual sessions of the Expert Mechanism take part as observers, including States, national human rights institutions, indigenous peoples’ organizations and other non-State actors, irrespective of their accreditation. All observers enjoy the same opportunity to participate in the sessions with written and oral interventions.

C. Working Group on Indigenous Populations (1982–2006)

23. Established in 1982 by the Economic and Social Council in resolution 1982/34, the Working Group on Indigenous Populations, a subsidiary body of the Sub-Commission on the Promotion and Protection of Human Rights, itself a subsidiary body of the Commission on Human Rights, was the first United Nations body to open participation to indigenous peoples’ organizations without consultative status with the Economic and Social Council. The Working Group comprised five members of the Sub-Commission, who were independent experts on human rights. The Working Group decided at its first session that indigenous peoples’ organizations without consultative status with the Economic and Social Council should be able to participate as observers in the Working Group alongside States, non-governmental organizations with Economic and Social Council consultative status and others. OHCHR and its predecessors managed the accreditation process.

D. Commission on Human Rights working group on a United Nations draft declaration on the rights of indigenous peoples (1995–2006)

24. In its resolution 1994/45, the Sub-Commission on the Promotion and Protection of Human Rights adopted the draft United Nations declaration on the rights of indigenous peoples as submitted to it by the Working Group on Indigenous Populations and recommended that the Commission on Human Rights and the Economic and Social Council should take effective measures to ensure that representatives of indigenous peoples were able to participate in the consideration of the draft declaration by those two bodies, regardless of their consultative status with the Economic and Social Council.

25. In its resolution 1994/49, on participation of indigenous persons and organizations in bodies of the United Nations during discussion of the draft United Nations declaration on the rights of indigenous peoples, the Sub-Commission recommended that the Commission should approve the participation of indigenous persons and organizations, without regard to consultative status with the Economic and Social Council, during discussion of the draft declaration at meetings of United Nations bodies, including the Commission itself.

26. In turn, in resolution 1995/32, the Commission decided to establish an open-ended intersessional working group with the sole purpose of elaborating a draft declaration. The Commission invited relevant United Nations organs, bodies, programmes and specialized agencies and non-governmental organizations in consultative status with the Economic and Social Council which were interested in contributing to the activities of the Working Group to participate in its work, in accordance with established practice. In addition, it decided

that participation of other relevant organizations of indigenous people, in addition to non-governmental organizations in consultative status with the Economic and Social Council, should be in accordance with the relevant provisions of Economic and Social Council resolution 1296 (XLIV) and the procedures set out in the annex to the resolution, and invited such organizations to submit applications as soon as possible.

27. In the annex to resolution 1995/32, the accreditation procedure for organizations of indigenous people not in consultative status with Economic and Social Council was set out. That procedure was effectively endorsed by the Council and managed by OHCHR. In practice, States rarely objected to the participation of indigenous peoples' representatives in the Working Group and the process enabled indigenous peoples and States to work together constructively to elaborate the draft declaration on the rights of indigenous peoples.

E. United Nations Voluntary Fund for Indigenous Populations

28. The United Nations Voluntary Fund for Indigenous Populations was established in 1985 by the General Assembly in its resolution 40/131 to assist representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations by providing them with financial assistance, funded by means of voluntary contributions from Governments, non-governmental organizations and other private or public entities. The Fund has since been expanded to facilitate the participation of representatives of indigenous peoples' organizations in the Permanent Forum on Indigenous Issues (by resolution 56/140), the Expert Mechanism on the Rights of Indigenous Peoples (by resolution 63/161) and the Human Rights Council and human rights treaty bodies (by resolution 65/198).

29. The beneficiaries of the Fund are selected by a board of trustees, which comprises five individuals with experience in indigenous issues, appointed by the Secretary-General, who serve in their personal capacity. At least one member is required to be a representative of a widely recognized indigenous peoples' organization.

30. The selection of indigenous beneficiaries is based on several criteria, including that they be representatives of indigenous peoples' organizations and communities.³ The Board's recommendations are approved by the United Nations High Commissioner for Human Rights on behalf of the Secretary-General.

IV. Existing procedural rules regulating participation in United Nations bodies generally

31. The rules of procedure of various United Nations organs and their subsidiary bodies, in addition to those of international conferences convened under the auspices of the General Assembly, outline the modalities of participation. Accordingly, the rules of participation vary depending on the body in question.

32. Rules regulating the participation by non-State actors in United Nations bodies of most relevance to indigenous peoples are set out below.

³ See www.ohchr.org/EN/Issues/IPeoples/IPeoplesFund/Pages/criteria.aspx.

A. General Assembly

33. Participation in the General Assembly and its subsidiary organs is restricted to Member States, with membership in the United Nations being open to States under Article 4 of the Charter of the United Nations; non-Member States, entities and intergovernmental organizations and other entities having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent observer missions or offices at Headquarters; and specialized agencies and related organizations maintaining liaison offices at Headquarters.

34. The General Assembly may invite non-governmental organizations, as observers, for specific and special meetings of the General Assembly. It may also extend invitations to non-governmental organizations for international conferences held under the auspices of the General Assembly. For example, in its resolution 66/197, the General Assembly invited non-governmental organizations and other major groups that were accredited to the World Summit on Sustainable Development and those that were in consultative status with the Economic and Social Council to participate in the deliberations of the United Nations Conference on Sustainable Development, as appropriate, in accordance with the rules of procedure of the Conference.

B. Economic and Social Council

35. The Economic and Social Council comprises 54 States Members of the United Nations elected by the General Assembly, pursuant to Chapter X of the Charter of the United Nations. The Council may invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member, pursuant to Article 69 of the Charter.

36. Quite separately, Article 71 of the Charter provides that the Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

37. Pursuant to rule 73 of its rules of procedure, the Council may invite any national liberation movement recognized by or in accordance with resolutions of the General Assembly to participate, without the right to vote, in its deliberations on any matter of particular concern to that movement.

38. Participation by non-governmental organizations in the Council, its committees and sessional bodies is regulated by the rules of procedure and Council resolution 1996/31. Under that resolution, the Council created a committee on non-governmental organizations, comprising 19 Member States elected by the Council, which makes recommendations to the Council on the non-governmental organizations to be granted consultative status with the Council.

39. Consultative status with the Council is facilitated through an online application process. Applications are initially reviewed by the Secretariat before submission to the Committee on Non-Governmental Organizations. Applications may be deferred where the Committee decides to seek clarification and answers to specific questions. Once the Committee has concluded its deliberations, its recommendations on the granting, suspension or withdrawal of consultative status are submitted to the Council for its approval.

40. As at 1 September 2011, there were 3,536 non-governmental organizations accredited by the Council, including organizations engaged in indigenous peoples' issues.

41. Under resolution 1996/31, non-governmental organizations can seek one of three kinds of consultative status: general consultative status, special consultative status or a listing on the Roster. General consultative status applies to organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields of activity covered by the Council. They also need to be closely involved with the economic and social life of the peoples of the areas that they represent and their membership, which should be considerable, should be broadly representative of major segments of society in a large number of countries in different regions of the world.

42. Special consultative status applies to organizations that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status. In addition, organizations to be accorded special consultative status because of their interest in the field of human rights should pursue the goals of promotion and protection of human rights in accordance with the spirit of the Charter, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action.

43. Other organizations that do not have general or special consultative status but that the Council, or the Secretary-General, in consultation with the Council or its Committee on Non-Governmental Organizations, considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their competence are included on the Roster. This list may also include organizations in consultative status or a similar relationship with a specialized agency or a United Nations body. These organizations are to be available for consultation at the request of the Council or its subsidiary bodies.

44. Representatives of non-governmental organizations in general or special consultative status with the Council may participate as observers in public meetings of the Council, its committees and sessional bodies, pursuant to rule 81 of the rules of procedure. Pursuant to the same rule, those on the Roster may have representatives present at such meetings when matters within their field of competence are being discussed. The provisional agenda of the Council, or commissions and other subsidiary organs of the Council, is to be communicated to organizations in general consultative status and special consultative status and to those on the roster, and organizations in general consultative status may propose to the Committee on Non-Governmental Organizations that the Committee request the Secretary-General to place items of special interest to the organizations in the provisional agenda of those bodies.

45. Pursuant to rule 82, the Committee on Non-Governmental Organizations may consult organizations with general consultative status and special consultative status on matters within their competence, other than items on the agenda, by request of the Council, the Committee or the organization. Pursuant to rules 83 and 84, such consultation may also occur with regard to items on the Council's provisional agenda. Pursuant to rule 84, the Committee is to make recommendations to the Council as to which organizations in general consultative status should make an oral presentation to the Council and on which items they should be heard. Such organizations are entitled to make one statement to the Council, subject to the approval of the Council. Furthermore, whenever the Council discusses the substance of an item proposed by a non-governmental organization in general consultative status and included in the agenda of the Council, such an organization is entitled to present orally to the Council an introductory statement. Such an organization may be invited by the

President of the Council, with the consent of the Council, to make, in the course of the discussion of the item before the Council, an additional statement for purposes of clarification.

46. Functional commissions or other subsidiary organs of the Council may consult organizations in general and special consultative status either directly or through a committee or committees established for that purpose. In all cases, such consultation may be arranged upon request by the organization. Organizations on the Roster may also be heard on the recommendation of the Secretary-General and at the request of the body.

47. Written statements relevant to the work of the Council, or commissions and other subsidiary organs of the Council, may be submitted by organizations in general consultative status and special consultative status on subjects in which those organizations have a special competence, while the Secretary-General, in consultation with the President of the Council, or the Council or its Committee on Non-Governmental Organizations, may invite organizations on the Roster to submit written statements.

C. Human Rights Council

48. Participation in the Human Rights Council is governed by General Assembly resolution 60/251, the constitutive resolution of the Council. The General Assembly decided in paragraph 11 that the Council was to apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and that the participation of and consultation with observers, including States that were not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, was to be based on arrangements, including Economic and Social Council resolution 1996/31 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of those entities.

49. Rule 7 (a) of the Council's rules of procedure, adopted by the Council in resolution 5/1, uses identical language under the heading "Participation of and consultation with observers in the Council". Only non-governmental organizations in consultative status with the Economic and Social Council can be accredited to participate in the meetings of the Human Rights Council. They are entitled to attend and observe the Council sessions, with the exception of proceedings in relation to Council's confidential complaints procedure (which is open only to the 47 members of the Council), to submit written statements and make oral interventions, to participate in debates, interactive dialogues, panel discussions and informal meetings and to organize parallel events.

50. The Council undertakes a universal periodic review of States and their compliance with human rights. A review of a State is based on: a national report prepared by the State under review; a compilation of United Nations information on the State under review prepared by OHCHR; and a summary of information submitted by other stakeholders, also compiled by OHCHR. Civil society actors, including non-governmental organizations without consultative status with the Economic and Social Council, can submit information to be included in the summary of stakeholders' information. Information used in the summary is posted on the OHCHR website as background. Only non-governmental organizations in consultative status with the Economic and Social Council, however, can be accredited to participate in the sessions of the Working Group on the Universal Periodic Review, as observers. They are not permitted to make oral or written statements to the Working Group.

51. Notably, non-governmental organizations without consultative status with the Economic and Social Council are permitted to attend meetings of the Social Forum, the

Forum on Minority Issues and, as mentioned above, the Expert Mechanism, all of which are associated with the Human Rights Council. Furthermore, Economic and Social Council consultative status is not required for engagement with the Human Rights Council's special procedures, including the Special Rapporteur on the rights of indigenous peoples. The Special Rapporteur has established formal means or mechanisms to enable indigenous peoples to communicate directly with the mandate.

National human rights institutions in the Human Rights Council

52. Unique participation rules are in place for national human rights institutions in the Human Rights Council pursuant to rule 7 (b) of the Council's rules of procedure. National human rights institutions that have been accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights as a result of their compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), the International Coordinating Committee and regional coordinating committees of national human rights institutions are entitled to participate as observers in the sessions of the Human Rights Council.

53. The Subcommittee on Accreditation of the International Coordinating Committee reviews national human rights institutions' applications for accreditation and makes recommendations thereon. Those recommendations are then submitted for adoption to the Bureau of the International Coordinating Committee. The Subcommittee comprises representatives of an "A status" national human rights institution (one that is in full compliance with the Paris Principles) for each of the four regional groupings (Africa, the Americas, Asia and the Pacific, and Europe) and the Bureau comprises 16 individuals representing national human rights institutions, with each regional group appointing four members accredited with "A status" (see A/HRC/16/77). While the United Nations is not formally part of the accreditation process, OHCHR is a permanent observer of the Subcommittee and serves as its secretariat.

54. National human rights institutions have dedicated seating in the Human Rights Council's main room. They may submit written submissions and make oral statements. In addition, there are other unique rules applicable to them, such as their entitlement to speak immediately after the State under review during the adoption of the outcome of a universal periodic review of that State by the Human Rights Council in plenary meeting, and immediately after the relevant State that is the subject of a country report by a special procedures mandate holder during the Council's interactive dialogue with the latter (see General Assembly resolution 65/281).

D. Participation of indigenous peoples' organizations in United Nations system organizations

55. Some United Nations system organizations and treaty bodies have developed specific processes to enable indigenous peoples to participate in their activities. For example, indigenous organizations participate in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization and the meetings of the Conference of the Parties to the Convention on Biological Diversity. The United Nations human rights treaty bodies have established procedures to enable civil society, including non-governmental organizations not accredited by the Economic and Social Council to participate.

V. Possible steps to promote the participation at the United Nations of recognized indigenous peoples' representatives

56. In the present section, a broad outline is provided of possible steps to facilitate the development of procedures to promote the participation of indigenous peoples' representatives in the United Nations, beyond the bodies in which they currently participate, including the Economic and Social Council, the Human Rights Council and meetings of the General Assembly and its committees when they consider issues of special relevance to indigenous peoples.

57. It is suggested that, before such procedures may be considered and adopted by any intergovernmental organs of the United Nations, any preliminary or preparatory process that explores the participation of indigenous peoples' representatives should consider a number of important questions, such as:

- (a) Criteria for determining eligibility of indigenous peoples' representatives for accreditation as such;
- (b) Nature and membership of the body to determine the eligibility of indigenous peoples' representatives for accreditation;
- (c) Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative;
- (d) Procedures that will make the participation of indigenous peoples' representatives meaningful and effective.⁴

58. Consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and in the interests of enabling indigenous peoples to participate in matters that affect them, it is important that indigenous peoples have the opportunity to be actively involved in the determination of the above issues, in partnership with Member States, before a procedure is finalized and adopted by any intergovernmental organs of the United Nations.

59. Such a process could take various forms. For example, the President of the General Assembly might consider appointing facilitators to lead an open-ended consultation process involving, among others, Member States, indigenous peoples' representatives and relevant mandates of the United Nations, such as 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, to discuss possible procedural and institutional steps and selection criteria. A recent precedent for indigenous representation in consultations was set when the President of the General Assembly appointed a representative of a Member State and a representative of indigenous peoples as co-facilitators to determine the modalities for the 2014 World Conference on Indigenous Peoples, following the request by the General Assembly in its resolution 65/198. Another possible step might be the establishment by the General Assembly of a working group to provide it with guidance on possible procedural and institutional steps and selection criteria to enable participation by indigenous peoples' representatives in United Nations bodies. A related option could be for the General Assembly to mandate the Economic and Social Council or the Human Rights Council to establish such a working group in the first instance.

⁴ Such a consultation process on appropriate accreditation procedures was authorized by the Commission on Human Rights to finalize the modalities for permitting national human rights institutions to participate in its work.

VI. Issues for consideration

60. As mentioned above, a number of issues will need to be addressed with a view to implementing a procedure to enable the participation of indigenous peoples' representatives in the United Nations.

A. Eligibility for accreditation as an indigenous peoples' representative

61. Existing practices may provide guidance in the identification of criteria for the accreditation of indigenous peoples' representatives. For example, in resolution 6/36, the Human Rights Council refers to indigenous peoples' organizations whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter. There is a similar requirement for non-governmental organizations in consultative status with Economic and Social Council, stated in Council resolution 1996/31. Other criteria applicable to non-governmental organizations in consultative status with the Economic and Social Council may also be relevant, such as that the organization undertake to support the work of the United Nations and to promote the knowledge of its principles and activities, in accordance with its own aims and purposes and the nature and scope of its competence and activities. Moreover, criteria may include a commitment to pursue the goals of promotion and protection of indigenous peoples' rights as expressed in the United Nations Declaration on the Rights of Indigenous Peoples, emulating the requirement for non-governmental organizations focused on human rights to pursue the promotion and protection of human rights.

62. In resolution 18/8, the Human Rights Council refers explicitly to the participation of recognized indigenous peoples' representatives in the United Nations system. This raises a number of important questions such as: from whom recognition is required, and what principles should determine, on the one hand, which indigenous peoples are recognized and, on the other, which representatives are recognized. In answering those questions, the fact that indigenous peoples have the right to self-identify as such, the right to self-determination, and the fact that there is no agreed definition of indigenous peoples should be borne in mind. Moreover, article 18 of the United Nations Declaration on the Rights of Indigenous Peoples states that 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. Similarly, article 33 states that indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures. In that light, it is important to ensure that the process to determine recognized indigenous peoples' representatives strengthens indigenous peoples' participation through their institutions, representative bodies and organizations.

B. Body to determine the eligibility of indigenous peoples' representatives for accreditation

63. As outlined above, processes are already in place to determine the accreditation of indigenous peoples' organizations and representatives to specific United Nations bodies, and their effective participation therein. For example, the secretariats of the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues (OHCHR and the Department of Economic and Social Affairs, respectively) manage the accreditation processes for each body. Similarly, in the cases of the United Nations Voluntary Fund for Indigenous Populations and national human rights institutions, independent bodies are responsible for determining the eligibility of the respective persons

and institutions. The Committee on Non-Governmental Organizations, comprising 19 States, and the Economic and Social Council approve the granting of consultative status with the Economic and Social Council to non-governmental organizations.

C. Details of the process, such as information required to be submitted to the accrediting body

64. In establishing an accreditation process for indigenous peoples' representatives, it is important that the process not inadvertently exclude legitimate representatives of indigenous peoples by, for example, requiring types of documentation that some indigenous peoples' organizations and institutions may not have, especially where they are organized in accordance with oral traditions.

D. Meaningful and effective participation by indigenous peoples' representatives

65. There is a question as to how the United Nations could make indigenous peoples' participation meaningful, equal and effective, given the limitations that may hamper the ability of some indigenous peoples' organizations and institutions to participate, such as a lack of knowledge of any of the six official languages of the United Nations, a lack of technical knowledge and little access to information technology, and the fact that many delegations are small, with limited resources, hindering their participation in multiple sessions associated with a meeting or in multiple United Nations meetings occurring simultaneously. In this respect, important initiatives, such as training organized for beneficiaries of the United Nations Voluntary Fund on Indigenous Populations and the technical and administrative support provided by non-governmental organizations for indigenous participants in United Nations meetings, might be considered and built upon.

VII. Conclusion

66. **To the extent that it has been permitted to date, indigenous peoples' participation at the United Nations has been a positive experience. It has enabled indigenous peoples who had been historically excluded to work together peacefully and in partnership with States to advance their issues and rights. It has been a process of mutual trust-building, premised on equality and equity among stakeholders, and has led to fruitful outcomes and greater commitments by indigenous peoples, States and the United Nations system to strengthen recognition and respect for indigenous peoples' rights. It is hoped that this spirit of openness and continuing collaboration with indigenous peoples will be improved by further enhancement of procedures to enable indigenous peoples' participation in all relevant work of the United Nations, in a way that realizes, respects, promotes and protects their rights under the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international human rights standards.**
