

UN Expert Mechanism on the Rights of Indigenous Peoples

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

1. Under paragraph 16 of the Human Rights Council resolution 48/11, EMRIP submits written inputs, within its mandate, on enhancing the participation of Indigenous Peoples.

**Background of EMRIP statements and proposals on the topic**

1. The Expert Mechanism on the Rights of Indigenous Peoples has been a strong proponent of the enhancement of Indigenous Peoples’ participation in the work of the Human Rights Council. Articles 5 and 18 of the United Nations Declaration on the Rights of Indigenous Peoples explicitly defined Indigenous Peoples’ right to participation in decision-making on matters that related to them, including the overarching right to self-determination, as expressed in articles 3 and 4 of the Declaration. The United Nations has the obligation to promote the United Nations Declaration on the Rights of Indigenous Peoples inside as well as outside of the United Nations. Article 41 of the Declaration specifically addresses 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 in the United Nations.
2. The participation of Indigenous Peoples themselves has been essential in the evolution of the Expert Mechanism’s mandate. Its new expanded mandate, allowing Indigenous Peoples the opportunity to request the support of the Mechanism for the facilitation of dialogue, capacity building and technical cooperation, is a form of self-determination, as is its revised mandate to decide on the themes of its own reports.[[1]](#footnote-1)
3. The Expert Mechanism’s report on self-determination, in which it is highlighted that the participation of Indigenous Peoples internationally, including the expression of Indigenous Peoples’ world views, lived experiences and perspectives at the United Nations, is an example of the exercise of their self-determination and their right to determine their space in the international community based upon the right to equality. Self-determination may also include Indigenous Peoples’ right to determine their place in the international community based upon the principle of equal rights. From an indigenous perspective, participation by Indigenous Peoples in the international indigenous movement is an example of the exercise of self-determination. That includes expressions of Indigenous Peoples at the United Nations and other international forums where they can express their world views and perspectives on the international level, external to their own communities. The “importance of ensuring that Indigenous Peoples’ voices, the very people whose self-determination is affirmed by the Declaration, are heard in the international community through participation in international policy forums and decision-making bodies” is recognized.[[2]](#footnote-2)
4. The participation of Indigenous Peoples in international forums is an important expression of their self-determination, and many Indigenous Peoples’ organizations are increasing their representation at such meetings. The importance of that participation was recognized by the General Assembly, by its adoption of resolution 71/321, on enhancing the participation of Indigenous Peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. [[3]](#footnote-3)
5. The Expert Mechanism has invited the Human Rights Council to continue to facilitate, in consultation with Indigenous Peoples, the participation of Indigenous Peoples’ representatives and representative institutions in the work of the Council, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and to commit to reducing as much as possible the barriers to Indigenous Peoples’ participation in the work of the Council, such as the languages barriers, as well as to promote the internet access and in person attendance of indigenous representatives.[[4]](#footnote-4)
6. The Expert Mechanism further encouraged the registration and accreditation modalities of the workshops to follow the example of the Expert Mechanism (A/HRC/RES/6/36) to allow for the broadest participation possible of Indigenous Peoples. The modalities under which Indigenous Peoples participate in other United Nations mechanisms, such as the Permanent Forum on Indigenous Issues, should be assessed to see whether any aspects of those modalities could be applicable to the work of the Human Rights Council, when its work affects Indigenous Peoples.
7. The Expert Mechanism has encouraged members of the Human Rights Council to consider how to facilitate the participation of Indigenous Peoples in its work and discussions, especially in the dialogue with the Expert Mechanism and the Special Rapporteur on the rights of Indigenous Peoples, which obviously required their inclusion.[[5]](#footnote-5)
8. The Expert Mechanism has proposed that the Human Rights Council, in consultation with Indigenous Peoples, make further efforts to enhance the participation in the Council of representatives of Indigenous Peoples and their representative institutions, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. That would include all meetings relevant to the rights of Indigenous Peoples, including the interactive dialogue with the Mechanism and the Special Rapporteur on the rights of Indigenous Peoples, the annual half-day discussion on the rights of Indigenous Peoples and sessions of the Working Group on the Universal Periodic Review. [[6]](#footnote-6)
9. For that purpose, the Expert Mechanism proposed that the Human Rights Council hold a technical workshop on modalities for the enhanced participation of Indigenous Peoples. In this regard, the Expert Mechanism welcomes the Human Rights Council resolution 48/11 adopted in October 2021, where the Council requested OHCHR to convene a four-day expert workshop, in 2022, on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council.
10. As indicated by the Expert Mechanism, the workshop should ensure representation from all seven indigenous socioeconomic regions and build on the outcomes of the intersessional interactive dialogue held on 15 July 2019, at which many indigenous representatives stressed the importance of a transparent and inclusive consultation process with Member States and the need for a specific status, reflecting the representative institutions of Indigenous Peoples.[[7]](#footnote-7)
11. Based on the model of the 2021 Human Rights Council roundtable on the same theme, the Expert Mechanism strongly encouraged that the Human Rights Council to appoint two co-facilitators in advance of the expert workshop. One co-facilitator nominated by Member States and another one by Indigenous Peoples, in order to assist the President of the Human Rights Council before and during the workshop, to participate in the negotiation process and conduct timely, inclusive, and transparent consultations with Member States, indigenous representatives and institutions from all regions of the world.

**Venues of participation**

1. Indigenous Peoples take part in all indigenous specific mandates and are taking part at the international level outside indigenous specific mandates, such as the work of the international human rights mechanisms, including the United Nations treaty bodies, the universal periodic review mechanism of the Human Rights Council and the special procedures of the Council.[[8]](#footnote-8)
2. The Expert Mechanism regrets that Indigenous Peoples and their representative institutions can only take the floor in the Human Rights Council through non-governmental organizations that had been accredited by the Economic and Social Council, as they were “the peoples”, recognized in article 1 of the United Nations Declaration on the Rights of Indigenous Peoples, and should be given formal status in the United Nations to allow them to express themselves as such. The participation of Indigenous Peoples at the United Nations was indispensable and crucial to informing the United Nations understanding of Indigenous Peoples’ human rights issues and proposing real measures to address them. [[9]](#footnote-9)
3. When it comes to participation of indigenous representatives and institutions in meetings such as the interactive dialogue with the Special Rapporteur on the rights of Indigenous Peoples; the interactive dialogue with the Expert Mechanism on the Rights of Indigenous Peoples; and annual half-day discussions, panels and intersessional activities on the rights of Indigenous Peoples, which obviously require their inclusion, participation modalities could be assimilated to those contained in HRC resolution 6/36 concerning the Expert Mechanism on the rights of Indigenous Peoples.

**Participation modalities-EMRIP model**

1. The Expert Mechanism as a subsidiary body of the Human Rights Council is 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 is also 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;
2. Right to speak in the context of the Expert Mechanism’s annual session is based on first come first serve basis, upon signing up in the list of speakers. All participants can take the floor and for an equal amount of time, two to three minutes depending on how long the list of speakers is and at the discretion of the Chair. Seating arrangements are also free.

**Selection criteria and selection modalities**

1. The Expert Mechanism has looked at several other models that could be examined:
2. The observer status of Non-Governmental Organizations (NGOs) and their manual for participation in the Human Rights Council as a possible model for consideration.[[10]](#footnote-10) NGOs are accredited through the Economic and Social Council (ECOSOC). ECOSOC accredited NGOs can: a) attend and observe all proceedings of the Council with the exception of the Council deliberations under the Complaints Procedure; b) submit written statements to the Human Rights Council; c) make oral interventions to the Human Rights Council; d) participate in debates, interactive dialogues, panel discussions and informal meetings; and e) organize “parallel events” on issues relevant to the work of the Human Rights Council. In most cases, ECOSOC decides to approve the recommendations. In very rare cases, it does not.
3. The observer status of national human rights institutions (NHRIs) as a useful model for consideration of participation venue, modalities, selection criteria and selection modalities for Indigenous Peoples’ enhanced participation in the Human Rights Council.[[11]](#footnote-11) While NHRIs have been recognized as international actors since the inception of the UN, their participation avenues were formalized through the “Paris Principles” developed during the UN International Workshop on National Institutions for the Promotion and Protection of Human Rights, which was held in Paris in 1991.[[12]](#footnote-12) NHRIs are accredited by the Global Alliance of National Human Rights Institutions (GANHRI) with either “A status” (full compliance) or “B status” (partial compliance), based on the extent of their compliance with the Paris Principles.[[13]](#footnote-13) GANHRI’s Sub-Committee on Accreditation (SCA) reviews and accredits NHRIs’ compliance with the Paris Principles.[[14]](#footnote-14) The SCA includes one NHRI representative from each of the four regional groups. Members are voted in by their respective regional network and serve for a three-year term, which is renewable. Regional networks also appoint an alternate for times when a member is unavailable or has a conflict of interest.

At the Human Rights Council, NHRIs with “A status” can: 1) participate in person or through pre-recorded video messages in the HRC plenary debates, including during the adoption of the outcome of the UPR of the country by the Council, the interactive dialogue following the presentation of a country mission report by a special procedures mandate holder and panels or annual discussions; and 2) submit documents, which will be issued with UN document symbol. Further, according to paragraph 28 of Human Rights Council resolution 16/21 on the Review of the work and functioning of the Human Rights Council, the “A” status NHRI of the country concerned shall be entitled to intervene immediately after the country concerned during the interactive dialogue, following the presentation of a country mission report by a special procedure mandate holder and also immediately after the State under review at the adoption of the UPR report in plenary. Resolution 16/21 also grants “A” status NHRIs the right to nominate candidates as special procedures mandate holders (paragraph 22(a)).[[15]](#footnote-15)

In accordance with Human Rights Council resolution 5/1, “A” status NHRIs are entitled to submit documentation at Council sessions. NHRIs may submit reports, policy papers, etc. “A” status NHRIs may also submit written statements to the Human Rights Council. "A" status NHRIs, the GANHRI and regional coordinating bodies of NHRIs speaking on behalf of “A” status accredited members, may present oral interventions to the Human Rights Council. Regional coordinating committees may present an oral statement, provided that they only speak on behalf of their member NHRIs that are in full conformity with the Paris Principles, evidenced by an “A” status accreditation with the GANHRI. At the beginning of the statement, the regional coordinating committee must state the names of the NHRIs on whose behalf they speak.

1. The Expert Mechanism notes that a key difference between NGO accreditation through ECOSOC and NHRI accreditation through GANHRI is that NGO accreditation must be approved by Member States while NHRIs are approved through their own committee, made up only of other NHRIs. These are models that could be explored.

**Next steps**

1. The Expert Mechanism has proposed that the Human Rights Council, in consultation with Indigenous Peoples, make further efforts to enhance the participation in the Council of representatives of Indigenous Peoples and their representative institutions, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.
2. The Expert Mechanism proposes that the Human Rights Council, in consultation with Indigenous Peoples, consider the establishment a working group with equal representation from States and Indigenous Peoples, taking into account the need for representation from all 7 socio-cultural regions, to continue the discussion as well as to start drafting working proposals on, *inter alia*, selection modalities and criteria. These proposals will be submitted to the Human Rights Council for consideration.
3. Considering the Expert Mechanism’s mandate, which includes to facilitate dialogue between States and Indigenous Peoples, EMRIP makes itself available to take part in this process as facilitator of such continued dialogue. Furthermore, the Expert Mechanism could provide technical advice on the proposals, if requested to do so.

1. A/HRC/48/75 Para. 32. [↑](#footnote-ref-1)
2. A/HRC/48/75, para 17. [↑](#footnote-ref-2)
3. A/HRC/48/75, para 31. [↑](#footnote-ref-3)
4. Proposals for the Human Rights Council July 2020 [↑](#footnote-ref-4)
5. A/HRC/49/69, Para 53. [↑](#footnote-ref-5)
6. A/HRC/42/55, para 12 [↑](#footnote-ref-6)
7. A/HRC/42/55 para 13 [↑](#footnote-ref-7)
8. A/HRC/48/75, para 32. [↑](#footnote-ref-8)
9. A/HRC/49/69, para 52. [↑](#footnote-ref-9)
10. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/PracticalGuideNGO\_en.pdf [↑](#footnote-ref-10)
11. <https://www.ohchr.org/en/hr-bodies/hrc/nhri-participation> [↑](#footnote-ref-11)
12. The Paris Principles, or the “Principles Relating to the Status of National Human Rights Institutions” establish the minimum standards that NHRIs must meet to be considered credible. The Paris Principles require that NHRIs have pluralism in membership, broad functions, adequate powers, a broad mandate, cooperative methods and engage with international bodies. [↑](#footnote-ref-12)
13. https://ganhri.org/nhri/ [↑](#footnote-ref-13)
14. https://ganhri.org/accreditation/ [↑](#footnote-ref-14)
15. https://www.ohchr.org/en/hr-bodies/hrc/nhri-participation [↑](#footnote-ref-15)