

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

**21-24 November 2022**

**Mr. Francisco Cali-Tzay**

**Special Rapporteur on the rights of Indigenous Peoples**

**Introduction**

The Special Rapporteur on the rights of Indigenous Peoples submits this paper pursuant to Human Rights Council Resolution 51/16. It provides his observations and recommendations on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council (HRC).

Article 41 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states that ″the organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of Indigenous Peoples on issues affecting them shall be established″. The Human Rights Committee, in its General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (ICCPR), recognized that the right to take part in the conduct of public affairs also covers the formulation and implementation of policy at the international and regional levels.[[1]](#footnote-1)

This paper offers insights and possible solutions to the current challenges faced by representatives of Indigenous Peoples seeking to have their voice heard at the HRC. It will address the following topics: the venues of participation, participation modalities, selection mechanism, and criteria.

**Venues of participation**

For Indigenous Peoples, the HRC and its mechanisms are important venues, where crucial decisions affecting them are made. Participation in international decision-making processes is an important element of the effective implementation of Indigenous Peoples’ right to self-determination. Their equal participation in the formation of human rights policies contributes to redressing the asymmetries of power and the structural racial discrimination that for centuries have excluded them from public debate and the formation of public policies.

In order to guarantee their right to participation at the HRC, representatives of Indigenous Peoples should be actively involved in the negotiation of resolutions and other international instruments that affect their rights. In this regard, the Special Rapporteur welcomes the positive practice observed during the 51st session of the HRC, where the sponsors of the resolution on the rights of Indigenous Peoples gave the opportunity to Indigenous Peoples to express their position and contribute to the negotiation process. The Special Rapporteur also welcomes practices observed at the UN Forum on Business and Human Rights, where the Secretariat arranged for rooms/offices for Indigenous Peoples to meet and discuss their common position as well as their common closing statement at the end of the Forum. To give effect to the fundamental principle reflected in Article 41 of the UNDRIP and Article 25 of the ICCPR, it is essential that Indigenous Peoples are able to fully and effectively participate in all UN and other international policy-making that affects their rights. In keeping with the focus of the Expert workshop, this paper focuses on such processes as they relate to the Human Rights Council, such as resolutions, and elaboration of Guidelines, Declarations and Treaties.

Recommendations:

* Member States and the UN Secretariat should proactively support and facilitate the free and effective participation of Indigenous Peoples in all HRC meetings treating issues affecting their rights, including UPR cycles, as well as all its subsidiary human rights mechanisms, such as the Forum on Business and Human Rights; Forum on Human Rights, Democracy and the Rule of Law; the Social Forum, Inter-sessional workshops and any other relevant meetings mandated by the HRC.
* Indigenous Peoples should be provided with all relevant information in advance, e.g. by sharing with them the documents needed and, when necessary, translating this information and documents into Indigenous languages, including in order that they can assess which meetings are most relevant to them.

**Participation modalities**

The forms and modalities of participation of Indigenous Peoples at the international level may vary according to the format and rules of the international forum concerned, and the nature and phase of the process. Participation may be ensured through different means, including the granting of observer, consultative or participatory status; advisory committees open to relevant stakeholders; forums and dialogues; webcasting of events; and general calls for comments. For rights-holders to participate effectively at the international level, access to information about these means of participation is indispensable.[[2]](#footnote-2)

Procedural rules at the Human Rights Council do not adequately take into consideration the cultural specificities and *sui generis* rights of Indigenous Peoples. The modalities of participation usually do not provide enough time for civil society to contribute to discussions and decision-making during these meetings. During the Human Rights Council sessions, the space for interventions by civil society is increasingly limited, and strictly bound to the topic under discussion. Very often indigenous representatives have undertaken a long journey to participate in UN meetings only to find there is not time or thematic scope for them to present their relevant perspectives and concerns. In principle, they should be involved in the framing of topics to be discussed. In any event, in the limited time accorded to them, indigenous representatives should be given maximum deference and flexibility to decide what remarks are relevant to the topic at hand. Opportunities should also be provided, for instance through a side event/parallel event, for them to more fully discuss these issues and voice their views and concerns. The Special Rapporteur notes the good practice of the Indigenous caucuses ahead of the forum on Business and Human Rights organized in partnership with civil society, when the Secretariat of the Forum provides briefings to Indigenous Peoples about modalities of participation.

In order to address the scarcity of means for many Indigenous Peoples, States should consider allocating additional financial resources to make their effective participation a reality. Article 39 of the UNDRIP states that “Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.” Visa restrictions should also be lifted and the application process facilitated for Indigenous Peoples to travel to Switzerland to participate in the work of the Human Rights Council and subsidiary forums and meetings. In addition, the possibility of interactive virtual participation should be maintained for Indigenous Peoples.

Recommendations:

* Indigenous Peoples should be provided the opportunity to get appropriate information and training on their participation ahead of meetings in order to strengthen their capacity for participation.
* When speaking, Indigenous Peoples should be given maximum deference and flexibility to decide what remarks are relevant to the topic at hand, and should be enabled also to further elaborate their concerns by, for example, supporting their organization of side events, or the establishment of a dedicated platform such as Indigenous Caucuses.
* Member States should immediately pledge funds to the UN Voluntary Fund on Indigenous Peoples, whose mandate is precisely to facilitate financial and logistic aspects of Indigenous Peoples’ participation in UN processes, including particularly the Human Rights Council.

**Selection mechanism**

The Special Rapporteur recalls that under International Human Rights Law, Indigenous Peoples have the “right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.” (Article 18 UNDRIP). [[3]](#footnote-3) For this reason, special mechanisms for selection of Indigenous Peoples representatives are needed, which may differ from those for other stakeholders such as NGOs. In this regard, the Special Rapporteur would like to recall his mandate’s previous proposal to establish “a separate category of participation in the United Nations, including in the General Assembly, for Indigenous Peoples, as the current procedures and practices such as those applicable to non-governmental organizations accredited to the Economic and Social Council do not naturally or sufficiently accommodate the participation of Indigenous Peoples in United Nations bodies.”[[4]](#footnote-4) Indigenous Peoples should be “accredited at a level higher than NGOs, similar to observer status and NHRIs, non-member States and entities and organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly.”[[5]](#footnote-5) This proposal applies equally to the Human Rights Council and its mechanisms, as subsidiary bodies of the General Assembly.

Recommendations:

A distinct permanent mechanism based in Geneva should be established to organize the participation of Indigenous Peoples in Human Rights Council sessions and other relevant human rights mechanisms and events.

In keeping with Article 18 of the UNDRIP, this mechanism should be led by representatives of Indigenous persons, who could for instance be formally appointed by the Council President based on names put forward by an indigenous caucus that would adopt and follow its own internal decision-making processes in accordance with indigenous practices.

The status of Indigenous Peoples’ representatives selected by the mechanism should be a category distinct from the more general category applied to, for instance, non-governmental organizations.

**Selection criteria**

In accrediting Indigenous representatives, the selection mechanism should apply international human rights law, under which Indigenous Peoples have the right to define who is indigenous. International instruments and bodies embrace this criterion,[[6]](#footnote-6) and the UNDRIP was adopted without a definition of Indigenous Peoples, endorsing instead the principle of self-identification in Article 33.[[7]](#footnote-7)

Very often the selection of civil society for the participation of UN events, including the Human Rights Council, is done by verification of their ECOSOC status. ECOSOC status should not be a primary criterion as it excludes many Indigenous organizations that have not been accredited by ECOSOC, and who play an important role in their Indigenous communities and States in advocating for the rights of Indigenous Peoples. Presently, Indigenous Peoples are often forced to rely on international “umbrella” organizations in order to obtain accreditation, and not being able to participate in their own name reinforces the invisibility of Indigenous Peoples in such international fora. The selection mechanism also needs to take into account that many Indigenous organizations, groups and networks do not have legal recognition under national laws. This is due to a number of factors including States not recognizing or acknowledging the existence of Indigenous Peoples as well as financial, administrative and political barriers to registration. This problem is particularly acute for women and girls-led organizations. Special measures must be taken to ensure access to resources and unimpeded access to relevant systems so that Indigenous organizations can participate freely and independently.

Indigenous Peoples’ representative institutions should have the exclusive authority to designate their own individual representatives in accordance with their own procedures, and the representatives should be able to present appropriate credentials from the institutions that they represent. Similarly, indigenous representatives should be recognized by their own constituents as such. [[8]](#footnote-8) State formal recognition should not be a requirement or selection criteria, but rather the self-identification of Indigenous Peoples. Given that many Indigenous Peoples have multiple representative institutions within and across States and regions, to accommodate indigenous diversity and specificities, selection criteria should be flexible and responsive to this diversity within communities of Indigenous Peoples.

In the selection process, particular attention should be paid to increasing the participation of Indigenous women-led organizations and associations. Indigenous women and girls face multifaceted discrimination, both from within their own community and by the State. They cannot always rely on Indigenous organizations that may accredit them to enable them to address the particular perspective, needs and challenges faced by Indigenous women and in relation to their rights. Indigenous women and girls do not have the support and means to participate meaningfully in decision-making processes at the international level due to their socio-economic status, as well as cultural and political biases, which suppress and minimize their ability to apply or take participation in such forums.

Recommendations:

* The principle of self-identification should guide determinations about which organizations and representatives qualify as Indigenous.
* ECOSOC status should not be a primary criterion for selection of participants representing Indigenous Peoples.
* Indigenous Peoples’ representative institutions should be able to select their individual representatives, and the overall criteria applied by the selection mechanism should seek to reflect the global diversity of such institutions, as well as geographic balance, gender diversity, participation of youth, older persons, and Indigenous Persons with disabilities.
* Measures must be taken to ensure Indigenous women and girls’ participation through their own organizations or associations/networks.

**Conclusion**

Indigenous Peoples have been historically excluded, and their views and needs have been inadequately addressed in decision-making processes, including at the national, regional and international levels. It should be stated at the outset that meaningful participation requires a long-term commitment by public authorities, as well as international organizations, together with their genuine political will, an emphasis on agency and a shift in mindset regarding the way of doing things.[[9]](#footnote-9) The Facilitative Working Group of the Local Communities and Indigenous Peoples Platform of the United Nations Framework Convention on Climate Change can be considered a good practice.

Decision-making at the international level may have a significant effect on the realization of the rights of Indigenous Peoples, as it has an impact on national legislation, policies and practices. It is thus necessary that such decisions are made in a transparent and accountable manner, with the full participation of those who will be affected by those decisions, and in an environment respectful of public freedoms, which are fundamental and should also be protected at the international level. Indigenous Peoples choosing to participate in regional and international meetings must be safe and protected from acts of reprisal or intimidation.[[10]](#footnote-10)

And finally, States should effectively disseminate, in accessible formats and Indigenous languages, the outcomes of decisions made at international forums, including recommendations emanating from the Human Rights Council and its mechanisms in implementation of States’ human rights obligations under international human rights law.[[11]](#footnote-11)

As the Secretary-General states in his Call to Action, “Human diversity is an asset, not a threat. We must appreciate the richness of our differences while never losing sight of our common humanity and dignity. Every community, including… Indigenous Peoples, must feel that its identity is respected and that it can fully participate in society as a whole.”[[12]](#footnote-12) Enhancing the participation of Indigenous Peoples in the work of the Human Rights Council should be viewed as an asset to enrich its decision-making capacity and better implementation of its mandate.

1. CCPR/C/21/Rev.1/Add.7 [↑](#footnote-ref-1)
2. [GuidelinesRightParticipatePublicAffairs\_web.pdf (ohchr.org)](https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf), para 98 [↑](#footnote-ref-2)
3. See also Articles 5, 19, 32, 33 [↑](#footnote-ref-3)
4. A/70/990 para.11 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/226/21/PDF/N1622621.pdf?OpenElement> [↑](#footnote-ref-4)
5. A/70/990 para. 13 [↑](#footnote-ref-5)
6. A/HRC/EMRIP/2019/3/Rev.1 para. 75 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/259/91/PDF/G1925991.pdf?OpenElement [↑](#footnote-ref-6)
7. See also ILO 169 Article 1.2, The American Declaration on the Rights of Indigenous Peoples (ADRIP) (2015) Article 1.2, Inter-American Commission on Human Rights, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, para. 216, and Inter-American Court of Human Rights, Case of the Xákmok Kásek Indigenous Community v. Paraguay I/A Court H.R., Merits, Reparations and Costs.  Judgment of August 24, 2010, Series C No. 214, para. 37 [↑](#footnote-ref-7)
8. A/70/990 para. 46 [↑](#footnote-ref-8)
9. [GuidelinesRightParticipatePublicAffairs\_web.pdf (ohchr.org)](https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf) [↑](#footnote-ref-9)
10. [GuidelinesRightParticipatePublicAffairs\_web.pdf (ohchr.org)](https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf), para 96 [↑](#footnote-ref-10)
11. [GuidelinesRightParticipatePublicAffairs\_web.pdf (ohchr.org)](https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf), para 114 [↑](#footnote-ref-11)
12. The Highest Aspiration: A Call to Action for Human Rights, UN, 2020, p.3 [↑](#footnote-ref-12)