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**Annual report of the United Nations High Commissioner
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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**

Intersessional interactive dialogue on ways to enhance the participation of indigenous peoples' representatives and institutions in meetings of the Human Rights Council on issues affecting them

Summary report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report summarizes the proceedings of the Human Rights Council intersessional interactive dialogue on ways to enhance the participation of indigenous peoples' representatives and institutions in meetings of the Council on issues affecting them. The intersessional dialogue was held on 15 July 2019 on the margins of the twelfth session of the Expert Mechanism on the Rights of Indigenous Peoples, pursuant to Council resolution 39/13.

The report contains summaries of the opening statements and introductory presentations, and the highlights of the interactive dialogue that followed.



I. Introduction

1. In its resolution 39/13, the Human Rights Council decided to hold a half-day intersessional interactive dialogue on ways to enhance the participation of indigenous peoples' representatives and institutions in meetings of the Human Rights Council on issues affecting them. The interactive dialogue was held on 15 July 2019, the first day of the twelfth session of the Expert Mechanism on the Rights of Indigenous Peoples. The present report is submitted pursuant to Council resolution 39/13.
2. The panel discussion was aimed at examining ways to enhance the participation of indigenous peoples' representatives and institutions in meetings of the Council on issues affecting them, and at facilitating dialogue between indigenous peoples' representatives and Member States, in order to strengthen indigenous peoples' participation at meetings of the Council.
3. The panel was chaired by the President of the Human Rights Council, Coly Seck, who was subsequently replaced by the Vice-President and Rapporteur of the Council, Vesna Batistić Kos. Opening statements were delivered by the President of the seventy-third session of the General Assembly, María Fernanda Espinosa Garcés (via video message), and by the Chief of the Indigenous Peoples and Minorities Section of the Office of the United Nations High Commissioner for Human Rights, Paulo David.
4. The interactive dialogue opened with presentations by Member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, Myrna Cunningham; Mohawk and representative of the Haudenosaunee External Relations Committee, Kenneth Deer; Ambassador and Permanent Representative of Finland to the United Nations Office at Geneva, Terhi Hakala; and Member of the Expert Mechanism on the Rights of Indigenous Peoples, Erika Yamada.
5. The panel discussion was accessible to persons with disabilities and was webcast and recorded.¹

II. Opening of the intersessional interactive dialogue

6. The intersessional interactive dialogue was opened by Ms. Espinosa Garcés via video message. She stressed that the issue of indigenous peoples' rights and their full and effective participation in the United Nations and its mechanisms had been a crucial priority for many years, making reference also to the United Nations Declaration on the Rights of Indigenous Peoples. The issue of indigenous peoples' participation had been evolving since the World Conference on Indigenous Peoples, held in 2014, followed by interactive hearings held by the President of the General Assembly.
7. She recalled that Member States and indigenous peoples had held dialogues on that subject, resulting in General Assembly resolution 71/321, in which the Assembly decided to continue its consideration of the issue at its seventy-fifth session. In addition, in the same resolution, the Assembly requested the President of the Assembly, as part of the preparatory process for the consideration of such measures during its seventy-fifth session, to organize and preside over informal interactive hearings and to prepare a summary of each hearing.
8. Ms. Espinosa Garcés further highlighted the involvement in that process of 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.
9. Ms. Espinosa Garcés emphasized the need for broad and flexible processes, in order to accommodate various forms of indigenous peoples' organizations. The diversity of indigenous peoples taking part and the balanced participation of the seven sociocultural regions had to be priorities. She affirmed that the United Nations had to acknowledge that indigenous peoples were not non-governmental organizations (NGOs), and stressed that

¹ See <http://webtv.un.org/meetings-events/human-rights-council/intersessional-activities/watch/intersessional-interactive-dialogue-on-indigenous-peoples-human-rights-council/6059360366001>.

indigenous peoples' participation made a substantive contribution to the work of the United Nations.

10. Mr. Paulo David, speaking on behalf of the Office of the United Nations High Commissioner for Human Rights, reaffirmed the need to remain committed to the United Nations Declaration on the Rights of Indigenous Peoples. The principles of the United Nations and of the Declaration had to be reflected in practice at the United Nations. He referred to article 41 of the Declaration, which states that the organs and specialized agencies of the United Nations system had to contribute to the full realization of the provisions of the Declaration.

11. Mr. David took stock of the progress made to date. He recalled that in 1923, Cayuga Chief Deskaheh of the Iroquois nation came to Geneva to petition the League of Nations to address the rights of his and other indigenous peoples in North America. Unfortunately, despite an entire year of advocacy and awareness-raising in Geneva, his pleas were met with what the Chief would later recall as "cruel indifference". Mr. David reminded the Council of the establishment of the Working Group on Indigenous Populations by the Commission on Human Rights in 1982, which reflected a conscious decision of the Commission to facilitate the participation of indigenous peoples' organizations in its sessions. Indigenous peoples' participation in the Working Group also allowed for their active engagement in the drafting and negotiations that led to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in 2007.

12. Mr. David highlighted that indigenous peoples' participation in their own right had strengthened the work of the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.

13. While acknowledging that there were understandably more constraints to the participation of indigenous peoples' representatives and institutions in the Human Rights Council than in the Expert Mechanism or the Permanent Forum, Mr. David encouraged Member States to keep an open mind and to hear from indigenous peoples regarding ways in which their participation in the Council could be enhanced. He likewise urged indigenous peoples to take into consideration the concerns of Member States.

14. Mr. David noted the active participation of indigenous peoples in certain aspects of the work of the Human Rights Council, including the universal periodic review, the annual panel discussion on the rights of indigenous peoples, and the interactive dialogues with the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples. He pointed out, however, that indigenous representatives had repeatedly flagged the requirement for accreditation by an NGO that maintained consultative status with the Economic and Social Council as a stumbling block to their participation.

15. Mr. David concluded by recognizing the complexity of the issue at hand and affirming the readiness of the Office of the United Nations High Commissioner for Human Rights to support both indigenous peoples and Member States in the quest for greater participation and for an improved recognition of the unique specificities of indigenous peoples worldwide.

III. Summary of the proceedings

A. Introductory presentations

16. Ms. Cunningham acknowledged the cooperation that has existed between the United Nations Voluntary Fund for Indigenous Peoples and the Human Rights Council and its predecessors over the years. She focused on the role of the Fund in strengthening the voices of indigenous peoples at the sessions of the Council and its subsidiary bodies, including the Expert Mechanism on the Rights of Indigenous Peoples and the Working Group on the Universal Periodic Review.

17. Over the past 34 years, more than 2,400 indigenous peoples' representatives had participated in United Nations meetings and processes thanks to support from the Fund. That participation had led to concrete impacts, including the issuance of recommendations on the rights of indigenous peoples to Member States from treaty bodies, enhanced dialogue among Governments and indigenous representatives and communities, and increased capacity of indigenous peoples themselves in engaging with processes and mechanisms of the United Nations. Citing several examples, Ms. Cunningham also underlined that training activities implemented by the Fund had strengthened indigenous peoples' participation in United Nations meetings and processes.

18. Ms. Cunningham pointed out that beneficiaries of the United Nations Voluntary Fund for Indigenous Peoples had contributed to several important processes, including the drafting and adoption of the United Nations Declaration on the Rights of Indigenous Peoples and the outcome document of the World Conference on Indigenous Peoples, which was adopted by the General Assembly in its resolution 69/2. The Board of Trustees of the Fund was scoping the possibility of further expanding the Fund's mandate in order to, inter alia, allow for greater participation in United Nations processes on climate change and the Forum on Business and Human Rights, and facilitate meetings with the Special Rapporteur on the rights of indigenous peoples during country visits.

19. Mr. Deer began his statement by indicating that while it was an honour to address the Human Rights Council on such an important issue, the Council had always been a difficult venue for indigenous peoples to navigate, owing to restrictive rules and brief time allocations. He also pointed out that the Council's annual panel discussion on the rights of indigenous peoples had been reduced from three hours to two.

20. He acknowledged the great personal and financial cost that indigenous peoples from all over the world bore when attending Human Rights Council sessions, with many never getting the chance to take the floor. Most distressing to him was the fact that indigenous peoples had to register as NGOs in order to enter the Council chamber or take the floor. The NGO label was unfair to indigenous peoples' representative institutions because indigenous peoples had structures or organizations that performed the same duties as some Governments, including laws and regulations, education systems, health systems, land tenure systems and membership or citizenship requirements.

21. He underlined that indigenous representatives were present at the dialogue not to advocate for the participation of NGOs, but to advocate for the enhancement of the participation of indigenous representatives and institutions as chosen by indigenous peoples themselves, as was their right. Also of significance was the inability of the NGO label to encapsulate the unique function of indigenous peoples as custodians of their cultures, languages, spirituality, political systems and their way of relating to other peoples.

22. Mr. Deer urged the Human Rights Council to show leadership in implementing the right of representation of indigenous peoples, rather than waiting for directions from the General Assembly. He referred to the status of national human rights institutions in the Council as a possible example of how indigenous peoples could be accredited at a level higher than NGOs and similar to observer status. He concluded by urging Member States to implement a process to institute the right of true representation of indigenous peoples in the human rights system.

23. Ms. Hakala opened by referring to the 2014 World Conference on Indigenous Peoples, to article 41 of the United Nations Declaration on the Rights of Indigenous Peoples, and to the report of the Secretary General on ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them, which was presented to the Human Rights Council at its twenty-first session (A/HRC/21/24).

24. She summarized the process that had led to the present interactive dialogue. She recalled how, at its seventieth session, the General Assembly had requested the President of the Assembly to conduct consultations on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies (see General Assembly resolution 70/232).

25. Following broad consultations, held during its seventieth and seventy-first sessions, the General Assembly adopted its resolution 71/321 on 8 September 2017. In that resolution, the Assembly recognized the need to find further ways and means of promoting the participation of indigenous peoples' representatives and institutions within the United Nations system on issues affecting them. It also requested the Secretary-General to report to it on that issue by the end of its seventy-fourth session. In the same resolution, the Assembly also requested the President of the Assembly to organize informal interactive hearings during its seventy-second, seventy-third and seventy-fourth sessions, ensuring, to the extent possible, balanced regional representation. The first two hearings were organized on the margins of the seventeenth and eighteenth sessions of the Permanent Forum on Indigenous Issues.

26. Ms. Hakala pointed out that the voices of indigenous peoples, including women and young people, were not being sufficiently heard in decision-making processes. In fact, indigenous peoples themselves were not in a position to take part in the annual dialogue of the Special Rapporteur on the rights of indigenous peoples with the Human Rights Council.

27. She stressed the support of Finland for the participation of indigenous peoples' representative institutions that had been self-determined in all General Assembly, Economic and Social Council and Human Rights Council meetings on issues affecting them, with participation modalities including, at a minimum, opportunities to speak and to provide written information.

28. In regard to the Human Rights Council, Ms. Hakala underlined that there was an opportunity to take concrete steps forward on the issue of participation. Indigenous peoples' representatives and institutions should have opportunities to speak at relevant meetings, to provide written information relevant to the Council's agenda and to make nominations for special procedures appointments.

29. Ms. Yamada recalled that the Expert Mechanism on the Rights of Indigenous Peoples had previously proposed that the Human Rights Council make further efforts to enhance the participation of indigenous peoples' representatives and institutions in its work. The Expert Mechanism would continue to make proposals to the Council on that issue in a constructive spirit, and it regretted that indigenous peoples and their representative institutions could only speak through NGOs maintaining consultative status with the Economic and Social Council, even when the very issue of indigenous peoples' participation was being discussed.

30. She underlined that in addition to its general provisions on participation in decision-making, in articles 5 and 18, the United Nations Declaration on the Rights of Indigenous Peoples also explicitly addresses the role of the United Nations in the full realization of its provisions in article 41. The Declaration went as far as stating that ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

31. Ms. Yamada acknowledged and commended Guatemala and Mexico – the co-sponsors of resolutions pertaining to indigenous peoples at the Human Rights Council – whose inclusive and respectful approach to indigenous peoples' participation in informal negotiations of resolution texts was greatly appreciated by indigenous representatives attending Council sessions.

32. She also recognized the indigenous representatives and organizations who through the years had ensured that indigenous voices were heard at the Council, despite the barriers to more enhanced participation. She expressed the Expert Mechanism's appreciation for the United Nations Voluntary Fund for Indigenous Peoples and for all the Member States that had contributed to it since its establishment.

33. When indigenous peoples' participation was facilitated and ensured in United Nations processes, positive outcomes were achieved. The Expert Mechanism had witnessed this first hand as one of the two United Nations bodies that allowed indigenous peoples to participate fully in their own right and capacity.

34. The United Nations Declaration on the Rights of Indigenous Peoples was an example of the power of participation, in that, for the first time, rights-holders had been allowed to participate fully in the drafting and negotiations of an instrument of international

law. While this led to a drawn-out process spanning over three decades, the Declaration stood as a triumph of indigenous peoples' participation. The Expert Mechanism's enhanced mandate was another example of indigenous peoples' participation leading to positive outcomes.

35. Ms. Yamada closed by advocating for dignity, stating that indigenous peoples wanted to be recognized for who they were. They were not States and they were not NGOs. The United Nations Declaration on the Rights of Indigenous Peoples was a major step in recognizing them as peoples, and the next step should be for the United Nations to facilitate their participation as such as a matter of humanity and dignity, and to facilitate cooperation among the global community.

B. Interactive dialogue

36. Representatives of several Member States and NGOs took the floor to make comments and proposals regarding indigenous peoples' participation in the work of the Human Rights Council.

37. States that took the floor were generally supportive of indigenous peoples' participation in the Human Rights Council and expressed their commitment to strengthening that participation. States recalled the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, as well as of the outcome document of the World Conference on Indigenous Peoples and of General Assembly resolution 71/321. Several States highlighted the role that indigenous peoples' participation played in the negotiation and adoption of the Declaration.

38. In terms of specific modalities for participation, some States suggested specifically that indigenous peoples should be able to take the floor, submit written information and nominate candidates for special procedures mandates. Some States also suggested that indigenous representatives and institutions should participate in the negotiation of Human Rights Council resolutions that were particularly relevant to them. Several States stressed that indigenous peoples should be closely involved in the process of reviewing modalities for their participation in the Council. While the participation of indigenous peoples in the sessions of the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues was valuable, it was important to also hear indigenous peoples' unique voices throughout the United Nations system.

39. Some States pointed out that the rules of procedure applied in the interactive dialogue had demonstrated the need for an expanded, inclusive process for indigenous peoples' participation. Some States were also explicit in stating that indigenous peoples should not have to be accredited under NGOs maintaining consultative status with the Economic and Social Council in order to participate in Human Rights Council activities. However, one of the main challenges identified was that of accreditation and determining selection criteria for potentially accrediting indigenous peoples to participate in the Human Rights Council in their own right, bearing in mind self-identification, self-determination and the diverse ways in which indigenous peoples choose to organize themselves. Another challenge identified by States was ensuring regional diversity in indigenous peoples' representation before the Human Rights Council, as well as promoting greater participation of indigenous women, young people and persons with disabilities.

40. While some States indicated that that was an opportunity for the Council to show leadership on the issue, others stressed that there was a need for a system-wide approach to indigenous peoples' participation in the United Nations and that that process should be centralized at the level of the General Assembly. Finally, several States acknowledged the role of the United Nations Voluntary Fund for Indigenous Peoples in supporting indigenous peoples' participation in United Nations meetings and processes.

41. Several representatives of indigenous peoples took the floor, accredited under NGOs maintaining consultative status with the Economic and Social Council. They recalled the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, in particular article 18 on the right to participate in decision-making, and of General

Assembly resolution 71/321. They indicated that the Council was a critically important venue for indigenous peoples' full and meaningful participation.

42. Several representatives indicated that indigenous peoples had their own government systems, traditional territories, languages and justice systems, and that, in some cases, they had even concluded treaties with other nations. Therefore, it was an indignity to be referred to as NGOs since they should be entitled to the same dignity and equality as all other nations and peoples.

43. In that regard, several representatives expressed their concern at the fact that the interactive dialogue had been undertaken following the rules of procedure and modalities of the Human Rights Council, which severely limited the participation of indigenous peoples and their representative institutions by requiring them to be accredited by an NGO maintaining consultative status with the Economic and Social Council. Some representatives indicated that such status was difficult to obtain and that only a handful of indigenous peoples' organizations had managed to achieve it.

44. Indigenous representatives agreed with the proposal made by some Member States that indigenous peoples should be able to take the floor in the sessions of the Human Rights Council and to submit written statements. They also stressed the need for a specific accreditation process for indigenous peoples, with some also advocating for the establishment of observer status. The criteria for accreditation had to be based on self-determination and self-identification.

IV. Concluding comments from the presenters

45. Ms. Cunningham thanked the presenters and delegations for their comments. Despite progress in terms of recognition of indigenous peoples, the first step towards enhancing their participation in the Human Rights Council and the United Nations as a whole was tackling the issue of accreditation. Accreditation procedures needed to be updated and made more flexible based on the current progress towards increased recognition of indigenous peoples and their rights. Flexibility meant making it possible for institutions and organizations of indigenous peoples to be accredited as peoples or nations in their own right. This was particularly necessary when it came to meetings that directly affected the situation and rights of indigenous peoples. Ms. Cunningham furthermore voiced support for allowing indigenous peoples and organizations to participate in the negotiation of Council resolutions and to nominate candidates for special procedures mandates.

46. She stressed that expanding the mandate of the United Nations Voluntary Fund for Indigenous Peoples was a step in the right direction in terms of enhancing indigenous peoples' participation in the United Nations system. Together with balanced representation of indigenous peoples across the seven sociocultural regions worldwide, those measures would help ensure equitable participation.

47. Mr. Deer began by regretting the limited participation of States in the dialogue, with only 10 State delegations taking the floor. He then referred to the previous experiences of indigenous peoples working with the General Assembly during the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and on the outcome document of the World Conference on Indigenous Peoples. On both those occasions, indigenous peoples had felt ambushed by Member States. Despite their extensive participation during earlier negotiation stages, they were excluded from the final stage of negotiations, with detrimental effects for the texts.

48. Indigenous peoples were looking to the Human Rights Council to proceed in good faith, together with them. Mr. Deer highlighted the Working Group on Indigenous Populations of the Commission on Human Rights as a body that implemented good practices in terms of the participation of indigenous peoples and that had good outcomes, from which many lessons could be drawn. He lamented that although indigenous peoples could nominate mandate-holders for the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues, they played no role in their

selection. This was in contrast to the Facilitative Working Group of the Local Communities and Indigenous Peoples Platform of the United Nations Framework Convention on Climate Change, in which indigenous peoples selected their own representatives from each of the sociocultural regions.

49. Mr. Deer closed by appealing to the Council to be less political and focus on the rights of all peoples, including indigenous peoples, so that indigenous peoples could have a voice. He advocated for indigenous peoples to be granted observer status, indicating that they were willing to contribute positively to the work of the Council.

50. Ms. Hakala reaffirmed that human rights were indivisible, inalienable and universal. The process was a long and difficult one, with many options and possibilities to promote the participation of indigenous peoples in United Nations meetings and processes on issues that affected them. The next round of hearings for the General Assembly process would take place in 2020 and she was listening very closely to the different proposals being made by participants in the interactive dialogue. Innovative approaches were required, and a compromise needed to be found soon. She highlighted indigenous peoples' participation in the climate change and Sustainable Development Goals processes and indicated that perhaps a new category of accreditation could indeed be established if there was sufficient will.

51. Ms. Yamada acknowledged the commitment of the indigenous and State representatives that took the floor during the dialogue. She expressed hope that the event would be followed by a truly participative dialogue with more flexible modalities for indigenous peoples' participation. Many of the concrete answers to the questions posed during the interactive dialogue would only emerge from a continuous, ongoing dialogue between indigenous peoples and States. In that regard, the Expert Mechanism would continue to listen to proposals and transmit them to the Council.

52. She encouraged the Human Rights Council to consider regional dialogues on participation, in order to ensure that voices from all indigenous sociocultural regions were heard. She referred to the example of the universal periodic review, where the participation of indigenous peoples in the Working Group had led to concrete outcomes, with indigenous peoples' rights having been included in the recommendations. She concluded by indicating that it had been a pleasure for the Expert Mechanism to yield part of its meeting time to the Council so that the dialogue could take place and that all parties should continue working together to strengthen the participation of indigenous peoples in the Council.

53. The Vice-President and Rapporteur of the Human Rights Council closed the intersessional interactive dialogue.
