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ENHANCING THE ENGAGEMENT
OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES IN CITES

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Title:

**Enhancing the Engagement of Indigenous Peoples and Local Communities
in CITES**

Work presented to the CITES Secretariat

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Executive Summary

This report seeks to highlight the most effective participatory mechanisms being set up under international conventions and organisations as well as under State practice that ensure enhanced collaboration and involvement from IPLCs at the international stage. In order to guide CITES' Secretariat effectively, a wide range of international instruments and organisations have been considered, thus ensuring a geographical balance that necessarily buttresses the relevance of the assessment of the various tools considered in this report.

This report designed four pillars to outline the current modalities for IPLCs to engage at the international and national level.

This first pillar concerns the recognition of IPLCs, which purports to detail the criterion and procedures for IPLCs to get its accreditation and standing to participate at the international level. The result of this section shows two models of accreditation in the status quo. On the one hand, International organisations and International conventions routinely treat IPLCs as NGOs, which creates significant hurdles for IPLCs to get accreditation. On the other hand, significant changes happened in the UN system, which created a separate category for IPLCs to participate as Indigenous Organisations. The new category of participation resulted in a significant number of IPLCs participating in the UN process. However, the improvement is largely limited due to the unchanged procedures and deciding bodies which grant the accreditation.

As for the second pillar, the participation mechanisms from both international conventions and organisations as well as those stemming from State practice have been considered. All mechanisms that have been assessed foster low level participation from IPLCs to higher level participation clearly implicating IPLCs in the decision-making processes. With regards to international conventions and organisations, the mechanisms fostering to highest levels of participation with IPLCs were those that included the creation of new categories of membership specifically dedicated to IPLCs as well as the setting-up of special forums in which IPLCs may actively participate. With regards to State practice, the most inclusive mechanisms were those that heavily relied on the expertise and knowledge of IPLCs and that granted them great autonomy in, for instance, biological resource management.

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The third pillar aims to identify the best technical assistance and capacity building mechanisms for the better inclusion and engagement of IPLCs, both at the national and international levels. This section thus shows the activities States and organisations can develop in order to empower these groups and prepare them with the necessary tools to navigate the political and social constraints, as well as the bureaucratic world, that insists on hindering their effective participation. Here, three main types were identified: education and training, access of information and exchange, and capacity building.

The fourth pillar recognizes the particular sense of urgency in establishing voluntary funding mechanisms. Funds are mainly allocated for covering travel and accommodation costs of IPLCs to join meetings, and supporting projects that provide technical assistance and capacity building for IPLCs. Both kinds of funding mechanisms witnessed great success in enhancing IPLCS' participation and improving their livelihood. This report then identifies that there are four types of "contributors," namely governments, international organisations, public and private entities, and self-supporting activities. While funds of international conventions or organisations largely came from governments, such as Switzerland, Australia, Finland, Germany, and Norway, NGOs treat public and private entities as leading donors .

List of Abbreviations

CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
GEF	Global Environment Facility
IFAD	International Fund for Agricultural Development
IIFB	Indigenous Forum on Biodiversity
IPAF	Indigenous Peoples Assistance Facility
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPLCs	Indigenous People and Local Communities
IUCN	International Union for Conservation of Nature
LCIPP	Local Communities and Indigenous Peoples Platform
NGOs	Non-Governmental Organisations
OHCHR	Office of the High Commissioner for Human Rights
UNDEF	United Nations Democracy Fund
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNIPP	United Nations Indigenous People's Partnership
UN Voluntary Fund	United Nations Voluntary Fund for Indigenous People

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WCS	Wild Conservation Society
WIPO	World Intellectual Property Organisation
WIPO IGC	WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
WIPO Voluntary Fund	WIPO Voluntary Fund for Accredited Indigenous and Local Communities

1. Introduction

This report is presented to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat in the context of a research partnership with the Geneva Graduate Institute. We have been tasked with investigating different mechanisms of engagement CITES as well as other international conventions and organisations have set up to effectively include indigenous peoples and local communities (IPLCs) in their decision-making processes.

The importance of the report stems from two grounds. On the one hand, IPLCs' rights to self-determination are diminished by procedural difficulties for them to engage in international decision-making processes and their daring social-economic situations. It is categorical to design more accessible international decision-making processes to actualise their rights. On the other hand, the effective engagement of IPLCs has been shown to enhance the effectiveness of international mechanisms on the ground. For example, in the report of the CITES secretariat to the Seventy-fourth meeting of the Standing Committee, it is clear that the successful engagement of IPLCs would lead to more successful outcomes for sustainable use and trade.¹

The report starts with several clarifications. First, this report does not intend to define IPLCs. Many other reports concerning IPLCs have consistently stated that there is no universal definition of IPLCs, and the scope of rights for indigenous peoples and local communities may differ in international law.² A strict definition of IPLCs would be contrary to the wide-established principle of self-determination for IPLCs. Second, facing the definition challenge, this report takes a broad definition of IPLCs in order to capture the best practices. Specifically, the report includes IPLCs who live closely with wide lives and are impacted by the CITES process.

This report will showcase our main findings which will be divided into four main categories of findings, what we have called our “pillars.” The first pillar will discuss the manner in which

¹ ‘74th Meeting of the Standing Committee - AGENDA | CITES’ <<https://cites.org/eng/com/sc/74/agenda>> accessed 5 June 2022.

² Ashish Kothari and others, ‘Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global Overview and National Case Studies’ (Secretariat of the Convention on Biological Diversity, ICCA Consortium ... 2017).

IPLCs are being recognised, that is how they are being accredited to participate in the works of international conventions and organisations. Further, the second pillar will discuss the actual participation mechanisms existing under international conventions and organisations as well as the particular mechanisms States have established at their national level. These mechanisms will range from low-level participation being fostered from IPLCs to high-level participation. As for the third pillar, it will discuss the technical assistance and capacity building mechanisms being relied upon. This will include information access, education and training mechanisms as well as capacity building tools ensuring that IPLCs can actively contribute to the objectives of international conventions and organisations. In addition, for the fourth pillar, this report will tackle the issue of funding, thus presenting a comprehensive overview of different funding mechanisms being used to foster the participation of IPLCs.

The final part of this report will present the most effective mechanisms encountered fostering a higher level of participation from IPLCs and will seek to sketch some recommendations in this regard. It will also address the shortcomings of this research report and the challenges encountered along the research process. Prior to discussing the first pillar, the methodology of this research will be assessed.

2. Methodology

This report engages in a detailed textual review of different participation and funding mechanisms established by either States or international conventions and organisations for IPLCs. Diverse practices from states, international conventions, and organisations have been selected, with the consideration of geographic balance and diversity of functions. As a result, this report is able to produce a comprehensive mapping result encompassing prominent practices.

Based on the mapping result, this research approaches the evaluation of the effectiveness of these identified practices through literature reviews and expert interviews. Literature reviews consist of official statements, website publications, and scholarly articles. Literature reviews focus on *de jure* and *de facto* effects of the implementation of the different participation and funding mechanisms identified. Interviews aim to collect insights of practitioners, experts, academics, and related stakeholders on a number of elements including states' motivations, political considerations as well as practical implementation barriers.

3. IPLCs' Engagement in Four Pillars

3.1 Recognition of IPLCs

The first step for IPLCs to participate in the decision-making process is the recognition of IPLCs. The recognition of IPLCs refers to the process in which international conventions or international organisations allow or accredit IPLCs, under their relevant procedures, to participate in their decision-making process.

Two models of recognition co-exist on the international level. This section summarises two models: the competency-based model and the impact-based model.

On the one hand, IPLCs' participation in international conventions and organisations tends to undergo the same process as NGOs.³ Arguably, the underlying logic for this approach is that participation on an international level requires organisations as proxies for relevant stakeholders. On the other hand, a more direct form of participation emerged recently. Multiple UN agencies pointed out that the participation of indigenous peoples' representatives and institutions within the United Nations system should be based on the policy that impacts them, given that they are not always organised as non-governmental organisations.⁴ The new models of participation also drew some reservations.⁵ Despite the reservations, the establishment of the Temporary Committee for the Indigenous Coordinating Body for Enhanced Participation in the United Nations represents substantial progress. The Temporary Committee is the outcome of the second "Dialogue Meeting on Enhanced Indigenous Peoples' Participation at the UN" held in 2020 in Quito, Ecuador. The Committee includes Indigenous Peoples representatives from the seven indigenous socio-cultural regions, tasked to facilitate cooperation amongst Indigenous Peoples with regard to the enhanced participation process in

³ 'HRC Roundtable Discussion on the Enhanced Participation Organised by UN Human Rights Council' (*Asia Indigenous Peoples Pact*, 16 July 2021) <<https://aippnet.org/hrc-roundtable-discussion-enhanced-participation-organised-by-un-human-rights-council/>> accessed 2 May 2022.

⁴ Enhancing the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them 2017 [A/RES/71/321]; Human rights and indigenous peoples 2011 [A/HRC/RES/18/8].

⁵ Compilation of views on possible measures necessary to enable the participation of indigenous peoples' representatives and institutions in relevant United Nations meetings on issues affecting them, and of good practices within the United Nations regarding indigenous peoples' participation Note by the President of the General Assembly 2016 para 9.

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the United Nations, in particular, the General Assembly and the Human Rights Council. However, the Temporary Committee had to postpone its activities due to Covid-19 and the digital connectivity problems for IPLCs.

In 2012, the UN Secretary-General proposed several vital considerations to facilitate the participation of IPLCs in the UN system. These considerations include:

“(a) Criteria for determining the 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.”⁶

The first three considerations enumerate the appropriate steps to allow or accredit IPLCs. The first consideration addresses the criteria of eligibility. The second demystifies who decides the final result of accreditation. The third pays attention to the detailed procedures of the accreditation process.

It is worth mentioning that the fourth consideration bears equal significance as the rest. However, it falls into the later chapter addressing technical assistance. Therefore, the present chapter respectfully excludes it from the present discussion.

The present chapter builds on the first three considerations as mapping parameters to survey some key International Conventions and International Organisations allowing the participation of IPLCs. The first three sections present how IPLCs could participate in the international level as NGOs. The last section focuses on the impact-based model with some observations.

3.1.1 Eligibility

Competence in the relative field repeatedly emerges in the eligibility consideration. For example, the Convention on Biological Diversity (CBD) Rule of Procedure 7.1 provides that

⁶ Secretary-General Un, ‘Ways and means of promoting participation at the United Nations of indigenous peoples’ representatives on issues affecting them :’ (UN, 2012) A/HRC/21/24 <<https://digitallibrary.un.org/record/731441>> accessed 28 March 2022.

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the observer status can be permitted to organisations qualified in fields relating to the conservation and sustainable use of biological diversity.

Some conventions also articulate the meaning of operational capacities. For example, Paragraph 91 of the *Operational Directives for the implementation of the Convention for the Safeguarding of the Intangible Heritage* stipulates that an organisation must have a regular active membership, an established domicile, and a recognised legal personality as compatible with domestic law having existed and having carried out appropriate activities for at least four years when being considered for accreditation.⁷

International conventions and organisations sometimes also impose value requirements, which stipulate that organisations seeking accreditation must share the value of the given conventions or organisations. For example, the World Intellectual Property Organisation Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC) has four eligibility requirements for organisations seeking accreditation. The third eligibility criteria provides that the aims and objectives of the organisation shall conform with the spirit, purposes, and principles of WIPO and the United Nations.⁸

The representativeness of the organisation to its stakeholders also emerges frequently in the eligibility criterion. WIPO IGC requires that the organisation shall have authority to speak for its members through its authorised representatives.⁹ The exact requirement also comes to light in the context of the Permanent Forum on Indigenous Issues. In order to become a member of the Permanent Forum, candidates must be based on broad consultations with indigenous organisations, taking into account the diversity and geographical distribution of the indigenous people of the world and the principles of transparency, representativity and equal opportunity for all indigenous people.

The burden on eligibility has resulted in a significant hurdle for IPLCs to participate at the international level. On the one hand, the competence requirement and operational capacity requirement would constitute a barrier for new-comers to get accreditation. IPLCs would have

⁷ 'UNESCO - Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Heritage' <<https://ich.unesco.org/en/directives>> accessed 4 April 2022.

⁸ 'Participating in the IGC' <<https://www.wipo.int/tk/en/igc/participation.html>> accessed 28 March 2022.

⁹ *Ibid.*

to either delay their participation after several years of operation or rely on established NGOs, which does not necessarily represent their interest to the fullest extent.

3.1.2 Deciding Body

The final deciding bodies are usually the Member States. This observation is almost true for all the international organisations and conventions surveyed.

The power of the Secretariat and preparatory committees is also prevalent. For example, the World Heritage Convention (WHC) has a dual system before the accreditation list reaches the General Assembly. First, the Secretariat receives requests from non-governmental organisations and submits recommendations to the committee concerning accrediting them and with regard to maintaining or terminating relations with them.

After the recommendation of the Secretariat, the Committee submits its recommendations to the General Assembly for decision. This dual system is also presented in the UN Expert Mechanism on the Rights of Indigenous Peoples.

Currently, the deciding body rarely has enough representation of the IPLCs. The issue is further intensified by the recent events when the President of the ECOSOC refused to appoint Ms. Joan Carling as the indigenous-nominated member as a member of the UN Permanent Forum.¹⁰

Another salient feature is the lack of transparency in the decision-making process of accreditation. There is rarely a requirement for active communication between the deciding bodies and applicants. Applicants remain passive in the decision-making process. The only way for applicants to communicate with the deciding body is *ad hoc* and non-public in nature. There is also no requirement to render public justifications and recommendations for applicants if deciding bodies fail to grant accreditation.

¹⁰ 'UN Overrides Indigenous Peoples' Internal Process for Nomination of Expert - IWGIA - International Work Group for Indigenous Affairs' <<https://iwgia.org/en/global-governance-cat/2420-un-overrides-indigenous-peoples-internal-process-f.html>> accessed 28 March 2022.

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Two approaches have been suggested. On the one hand, IPLCs suggested the establishment of new deciding bodies for approving accreditation composed of IPLCs. On the other hand, States proposed to maintain the State-dominant structure of the deciding bodies.¹¹

This section believes that a new deciding model is more appropriate for enhancing the participation of IPLCs. First, the Universal Declaration of Indigenous Peoples' Rights specifically provides that IPLCs should possess the right to self-determination, which logically implies that the participation of IPLCs on the international level should be determined by IPLCs. Second, a deciding body composed of IPLCs could encourage the participation of IPLCs because of their common bond and mutual understanding.

Admittedly, proponents of the State-dominant model correctly point out that the new deciding model might require an objective definition of IPLCs to facilitate the accreditation procedure. However, the need for an objective definition for IPLCs is not absolute. As long as the new IPLCs majority deciding body functions in a transparent manner with consistent dialogue with States, the objective definition for IPLCs appears unnecessary.

This research further proposes a dynamic and public decision-making process at the accreditation process. IPLCs need to understand how others succeed or fail to get accreditation.

3.1.3 Procedures

Common procedures across the organisations and conventions include the submission of contact information and a description of the organisation seeking accreditation.

The description can be brief or extensive. The description encompasses typically a statement of the qualifications, the statutes or the by-laws of the organisation, and documentation of the activities of the organisation.

Beyond these common elements of the procedure, the *UN Expert Mechanism on the Rights of Indigenous Peoples* requires an extensive proof, which includes the confirmation of the

¹¹ Compilation of views on possible measures necessary to enable the participation of indigenous peoples' representatives and institutions in relevant United Nations meetings on issues affecting them, and of good practices within the United Nations regarding indigenous peoples' participation Note by the President of the General Assembly (n 3) paras 32–33.

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activities of the organisation at the national, regional, or international level, copies of the annual or other reports of the organisation with financial statements, and a list of financial sources and contributions, including governmental contributions; and their countries of nationality, a description of the membership of the organisation, a list of members of the governing body of the organisation and their geographical distribution.¹²

The WHC also requires more extensive information, which includes the proof of the operational capacities, demonstrated by a regular active membership, an established domicile and a recognized legal personality as compatible with domestic law, and having existed and having carried out appropriate activities for at least four years when being considered for accreditation.

Sometimes, organisations seeking accreditation also need to submit their website as part of procedural requirements.¹³

Two problems are apparent at the current stage of the research. First, the documentation requirements effectively exclude newcomers from decision-making processes. The proof of the competence of the organisation often requires certain prior activities which could make newly established organisations fail to prove this procedural hurdle. More importantly, the confirmation of their activities required by the UN Expert Mechanism on the Rights of Indigenous Peoples could procedurally exclude marginal groups with little budget to advertise their activities.

Second, the current accreditation system imposes a high burden on operational capacity. Organisations need special staff to track and produce membership sheets and annual reports, which could be costly and infeasible for IPLC organisations. Notably, the requirement to submit a website may ignore the reality of IPLCs' living situations. It is hard to imagine that IPLCs could have grassroots organisations to represent themselves, given the requirement of operational capacity.

¹² Consultative relationship between the United Nations and non-governmental organizations 1996 [Resolution 1996/31].

¹³ Convention on Biodiversity, 'Observer Admission' (27 January 2010) <<https://www.cbd.int/ngo/meetings.shtml>> accessed 28 March 2022.

3.1.4 Impact-based Model

The novelty of the impact-based model results in substantial difficulties for this research. The majority of cases are only ongoing discussions, which makes the evaluation of the actual effectiveness become impossible.

In 2020, Permanent Forum for the first time opened participation for IPLCs to attend its sessions as Indigenous Organisations. Indigenous Organisations must register United Nations Integrated Civil Society Organisations (iCSO) System in order to participate.¹⁴

There is no clear guideline on the eligibility of IPLCs. Alternatively, this section studied the application system in the iCSO system. This section found no substantial differences in the application processes for the NGOs and Indigenous Organisations. Indigenous Organisations still need to prove their competence in the field of social development, illustrated by a brief description of their mission statement and relevant activities. Moreover, special attention has been given to the Indigenous Organisations prior engagements in the established NGO network and UN-led programs. The application also required Indigenous Organisations to reveal their funding structure and membership status.

This section further surveyed the Indigenous Organisations in the iCSO system. As of 2 May 2022, there are 273 Indigenous Organisations registered in the iCSO system. Two findings worth attention. First, many NGOs have been accredited as Indigenous Organisations. Second, many Indigenous Organisations do not have consultative status with ECOSOC and online footprint. These two findings collectively indicate that a separate category of participation did encourage more IPLCs to participate in the UN process. However, the accreditation is still primarily based on the competence-based model.

As for the deciding bodies and the procedure, this section did not observe substantial differences for IPLCs with NGOs. All the difficulties highlighted above could still become substantial hurdles for IPLCs. These stringent requirements form a vicious circle, which makes IPLCs have to accrue additional costs to navigate these bureaucratic procedures.

¹⁴ 'Accreditation for IPOs and Academics Participating for the 1st Time at Permanent Forum Session (NOW CLOSED) | United Nations For Indigenous Peoples' <<https://www.un.org/development/desa/indigenouspeoples/news/2020/01/new-registration/>> accessed 1 May 2022.

This research welcomes the separate category of IPLCs. However, the research would also like to propose more tailor-made procedures to enable IPLCs to participate at the international level, especially by enabling more newcomers to navigate the complex system of accreditation.

After understanding both models of accreditation, the next section will show how IPLCs could participate at the international and national levels. Specifically, the next section detailed IPLCs' capacities to make changes and raise their voices.

3.1.5 Recommendations to the CITES

Currently, the CITES still follows the capacity-based model to recognise IPLCs. In its rule 2 of the Rules of Procedure, IPLCs could only participate in the CITES process if they “technically qualified in protection, conservation or management of wild fauna and flora,” and “has been approved for this purpose by the State in which it is located.” Additionally, the deciding body is still State-dominant. According to rule 2 of the Rules of Procedure, IPLCs are required to notify the CITES Secretariat of their intentions to participate in the CITES process and States could deprive their observer status by one-third objection of presented States. Moreover, there is no dedicated guideline for IPLCs to navigate the procedural requirements for participation. Accordingly, this report makes three recommendation:

An amendment to the Rules of Procedure to establish a dedicated category of observer to IPLCs. The new category should eliminate the requirement of competence but rather consider the willingness of IPLCs and how the CITES process impact their lives.

A new deciding bodies with sufficient representation of IPLCs to recognise the new category of observers.

A detailed guideline for IPLCs to navigate the procedural requirements for participation.

3.2 Forms of Engagement with IPLCs

The second pillar of this analysis will be first addressed through the consideration of the mechanisms enhancing the participation of IPLCs under international conventions and organisations. After, the particular mechanisms being used by States both at the national and international levels will be discussed. To do so, CITES Secretariat has enumerated five forms of engagement with IPLCs. The same terminology will be used in this report for assessing the various levels of empowerment granted to IPLCs. These forms include: 1) information giving; 2) consultation; 3) involvement; 4) collaboration; and 5) empowerment.¹⁵ Despite the fact that CITES uses a precise terminology to determine the ways through which IPLCs' engagement can be fostered, it should be noted that the latter are not properly defined. Rather, these forms of engagement are mostly implied by the practice of States parties, both at the national and international level, and by the mechanisms established under international conventions and organisations. Further, very little literature exists on the particular forms of engagement existing with regards to IPLCs.

However, in its 2012 report, the United Nations Secretary-General stressed four aspects to be considered when embarking on any sort of preliminary or preparatory process exploring the issue of Indigenous peoples' participation - no mention of Local communities in the above-mentioned report -, shedding some light on the issue at hand. Among them rests one element directly related to the issue at stake, which consists in paying close attention to the "procedures that will make the participation of indigenous peoples' representatives *meaningful and effective*" - [our emphasis].¹⁶ This exemplifies to a certain extent the paramount criteria that should be considered while assessing the participation mechanisms that have been put forward.

3.2.1 International Conventions and Organisations

3.2.1.1 Information Giving and Consultation

Passive forms of engagement and participation mechanisms will be first addressed, those are the information giving and the consultation processes. These forms of engagement with IPLCs

¹⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora, *Engagement of indigenous peoples and local communities: Report of the Secretariat*, SC74 Doc. 20.2, available online at: <<https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-20-02.pdf>>, para 10.

¹⁶ Human Rights Council, *Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them: Report of the Secretary-General*, 2 July 2012, A/HRC/21/24, para. 57.

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range from hosting panels addressing IPLCs' specific issues, granting them an observer status to participate in dedicated working groups or forums so they can share their concerns, and consulting them at precise steps of a decision-making process without including them per se. For instance, under WIPO, a quite passive and low level participation of IPLCs has been implemented. The Organisation hosts indigenous panels, which are information sessions on IPLCs' experiences delivered through the WIPO IGC to raise awareness about issues directly impacting them. This does not foster any sort of inclusion or active participation of the IPLCs in a decision-making process. It should, however, be noted that these panels still provide invaluable insight into the experiences, concerns and aspirations of IPLCs concerning the protection, promotion and preservation of genetic resources, traditional knowledge and traditional cultural expressions.¹⁷

Furthermore, the United Nations Environment Programme (UNEP) has set up mechanisms in a similar fashion. In fact, it has identified "Indigenous peoples and their communities" as one of the nine "Major Groups" in its Agenda 2134, leaving, however, aside local communities. Despite these policy implications of a certain importance which indicate that close attention will potentially be paid to these communities, it is not in itself a participation mechanism that actively encourages the inclusion of IPLCs in the work of UNEP. It is rather a demonstration of a future intention on behalf of the member States of the Organisation.¹⁸

On the other hand, the CBD seeks to foster a rather more active form of participation from IPLCs. In fact, the latter may seek the status of observers, not active participating stakeholders with voting rights, and therefore be appointed to the Working group on Article 8 (j), which is the main article of the CBD enshrining the right of IPLCs to see their traditional knowledge being preserved and promoted in the field of biological conservation.¹⁹ Despite the fact that the actual impact of the obtainment of an observer status remains to be seen in raising awareness of IPLCs' concerns, one should note that a dedicated forum as the Working group is critical in enhancing the participation of IPLCs. Indeed, the reports and research documents it produces are directly submitted to the CoP for consideration, thus having a significant influence on the

¹⁷ WIPO. 2022. "Presentations on Indigenous and Local Community Experiences." *WIPO*, available online at <<https://www.wipo.int/tk/en/igc/panels.html>>.

¹⁸ United Nations General Assembly, *Report of the United Nations Conference on Environment and Development*, A/Res/47/190 (March 16, 199335), available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/157/00/IMG/N9315700.pdf?OpenElement>>.

¹⁹ The Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69), Article 8 j), [CBD].

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manner in which the Convention is being implemented. This working group will be further discussed in the subsequent section.

The UN Framework Convention on Climate Change (UNFCCC) is another relevant example in this regard. In fact, the parties of this Convention have been keen on integrating organisations dedicated to promoting the interests of indigenous peoples as it recognises indigenous organisations as observers of the work of the Convention. The UNFCCC also recognises as observers a vast range of non-governmental organisations (NGOs), including some representing the interests of local communities. At the moment, over 3000 NGOs are accredited as observers.²⁰ Despite this particular consideration of this type of advocacy organisations, this remains a rather passive participation mechanism.

In addition, the WHC also encourages the participation of IPLCs in implementing the objectives of the Convention. However, the level of participation enabled is somehow restrictive as no dedicated mechanisms targeting IPLCs have been set up. Nevertheless, members of the civil society and from IPLCs can be involved in the Preliminary Assessment request to add a site to the list of protected sites. Despite this somehow superficial implication, the lack of further participation in later processes restricts the possibility of meeting a truly effective and meaningful participation of IPLCs.²¹ Moreover, the Secretariat of the Convention encourages States to consult with different stakeholders to the broadest extent possible in deciding which heritage site should be protected, but does not provide further guiding principles on how to do so, especially regarding IPLCs.

3.2.1.2 Involvement

Now, with regards to mechanisms fostering higher levels of participation of IPLCs, the form of engagement that is the “involvement” shall be assessed. It consists of the establishment of dedicated forums, working groups or task forces that have the objective to bolster the participation of IPLCs, notably through the facilitation of the sharing of their expertise and knowledge, but also by raising awareness on issues especially impacting the IPLCs.

²⁰ United Nations Framework Convention on Climate Change. 2022. “Overview.” *UNFCCC*, available online at <<https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/overview>>.

²¹ UNESCO, ICCROM, ICOMOS and IUCN. 2020, “Guidance on Developing and Revising World Heritage Tentative Lists,” available online at: <<https://whc.unesco.org/fr/documents/184566>>, p. 23.

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In this sense, the CBD is once again a relevant instrument to be considered. In fact, the Parties of the CBD have established a forum specifically dedicated to promoting the voices of IPLCs, particularly indigenous people. Indeed, the International Indigenous Forum on Biodiversity (IIFB) has a mission to foster the inclusion of indigenous peoples when considering the implementation of the CBD. Further, the IIFB has also been recognised at CBD's fifth CoP in 2000 as a consultative body to reach out to for the future CoPs, thus showing the importance given to the expertise of indigenous peoples in the field of biological diversity preservation.²² However, despite the relevance of the IIFB, this forum does not consider the particular input local communities may bring for the implementation of the CBD.

Further, the Working group on Article 8 (j) - discussed briefly above - constitutes in itself a dedicated forum fostering the participation of indigenous peoples. The Working group has a mandate to provide advice as to how to adequately implement Article 8 (j) and its related provisions.²³ Not only is it dedicated to enhancing the participation of IPLCs, but its very functions also ensures that indigenous representatives, for instance, are taking part in its activities. In fact, an indigenous co-chair assists the Chairperson of every meeting of the Working group, likewise for the sub-working groups meetings.²⁴

In a similar fashion, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) has established a dedicated task force - the Indigenous and Local Knowledge task force - which has been mandated to oversee and take part in the implementation of objective 3 (b) of the rolling work programme of IPBES up to 2030 consisting in enhancing “work recognition of and work with indigenous and local knowledge systems.”²⁵ The task force further acknowledges the importance of engaging with IPLCs as six of its members are indigenous representatives.²⁶

²² Convention on Biological Diversity, “Article 8 J): General Information” (2021), available at <<https://www.cbd.int/traditional/general.shtml>>.

²³ Convention on Biological Diversity, “Integration of Article 8 (J) and Provisions related to Indigenous Peoples and Local Communities in the Work of the Convention and its Proposals” (Charenton-le-Pont: The International Council on Monuments and Sites, 2017), p. 2, [Integration of Article 8 (J)].

²⁴ *Ibid.*, p. 3.

²⁵ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, “Indigenous and local knowledge in IPBES” (2022) <<https://ipbes.net/indigenous-local-knowledge>>.

²⁶ *Ibid.*

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The UNFCCC has also created a similar dedicated forum to foster the participation of the IPLCs, notably by establishing the so-called Local Communities and Indigenous Peoples Platform (LCIPP) at the twenty-first session of the CoP. This platform is designed to create an exchange forum ensuring the efficient sharing of the unique perspectives that IPLCs may have with regards to the fight against climate change.²⁷ Further, one particular aspect of the LCIPP is its web portal, which has been celebrated as the first online space on which holders of indigenous knowledge have worked collaboratively with member States.²⁸

One should, however, note that the UNFCCC has contributed even further in encouraging the participation of IPLCs, notably through the establishment of the Facilitative Working Group of the LCIPP to contribute in operationalising the Platform as well as facilitating the performance of its core functions. This latter working group has the particularity to be constituted of an equal number of members from indigenous communities and member States' representatives, leaving, however, aside the representation of local communities.²⁹

However, despite the progress being made through those dedicated forums, it should be noted that this form of engagement still does not constitute what the UN Secretary-General called for, that is the “effective and meaningful” participation of IPLCs. In many ways, these forms of engagement consist in having IPLCs interacting among themselves in “silo” forums which have no powerful echo outside of them. We shall thus assess other forms of engagement to highlight the ones fostering the highest levels of participation.

3.2.1.3 Collaboration and Empowerment

For this form of engagement, the most effective forms of participation which are further respecting the element of “effective and meaningful” participation that the UN Secretary-General had in mind will be discussed. Despite being scarce in examples, this section shall assess the benefits of an organisation's structure overhaul in order to make room for additional representatives dedicated to defending IPLCs' interests. It will also consider decision-making

²⁷ International Indigenous Peoples' Forum on Climate Change and The Centre for International Environmental Law, “Indigenous Peoples and Traditional Knowledge in the Context of the UN Framework Convention on Climate Change: Compilation of Decisions and Conclusions Adopted by the Parties to the Convention - 2019 Update” (2019), p. 8.

²⁸ *Ibid.*, p. 27.

²⁹ *Ibid.*, p.24.

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processes under conventions that deem the obtaining of a free, prior and informed consent of IPLCs to be a prerequisite, thus truly empowering IPLCs.

Despite the progressiveness of the measures being implemented under the UNFCCC, it has been considered that the Union for Conservation of Nature (IUCN) has probably put forward one of the most pioneering participation mechanisms, that is the reform of its actual membership structure. Indeed, the IUCN has created a dedicated membership category for IPLCs called Indigenous Peoples' Organisations. At the IUCN World Conservation Congress in 2016, the IUCN Members Assembly adopted a landmark decision for indigenous peoples and conservation, thus contributing to reforming the organisation's structure that has not been changed since its creation 70 years ago.³⁰ It should, however, be noted that the IUCN is not similar to the other organisations that have been considered for this report, as its members include not only States, but also government agencies, and international and national NGOs that make up a total of over 1400 members.³¹

Furthermore, in certain aspects, the WHC has also demonstrated a strong attachment to empowering IPLCs. Indeed, it should be noted that this instrument highlights the importance of obtaining the free, prior and informed consent of indigenous peoples before considering the inclusion of a site on its official list of protected sites.³² Although this particular attention is given to indigenous peoples, nothing similar exists for local communities.

3.2.2 State Practice

Through their practice, States have adopted different mechanisms to enhance the participation of IPLCs so they comply with their obligations under CITES. As these mechanisms could eventually be used by international organisations and conventions, it has been considered relevant to this research exercise to further discuss these mechanisms. This will be the second aspect to be considered in the discussion of this pillar.

³⁰ International Union for Conservation of Nature. 2022. "Governance and rights: Indigenous Peoples." *IUCN*, available online at: <<https://www.iucn.org/theme/governance-and-rights/our-work/indigenous-peoples>>.

³¹ International Union for the Conservation of Nature. 2022. "About." *IUCN*, available online at: <<https://www.iucn.org/about>>.

³² UNESCO, ICCROM, ICOMOS and IUCN. 2020. "Guidance on Developing and Revising World Heritage Tentative Lists," available online at: <<https://whc.unesco.org/fr/documents/184566>>, p. 23.

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Once again, the mechanisms that will be discussed range from inclusive practices that result in an active participation of IPLCs to mechanisms fostering lower level participation that results in a rather passive implication of IPLCs.

3.2.2.1 Legal Rights Recognition

The first mechanism to be considered in this section should be the enactment of a legal instrument recognising the rights of IPLCs. Despite the very passive “participation” this generates, it is still an essential component of the process of empowering IPLCs and fostering their participation in the work of CITES or any other conventions or organisations. In this regard, the case of Canada shall be underlined.

In fact, under Canada’s Constitution,³³ three groups of Aboriginal peoples are recognised: the First Nations, – *Indians* in the original text – Inuit and Métis. Section 35 of the Constitution further provides for the recognition of the existing Aboriginal and treaty rights of these three groups. This includes the right to access “wild animals and plants for subsistence and non-subsistence purposes; including for social, economic, cultural, ceremonial, and spiritual purposes.”³⁴ Thus, Canada not only has obligations to safeguard its indigenous peoples’ inherent rights, but it also needs to put in place mechanisms to effectively foster the participation of these communities with regards to the work of CITES. However, most of these obligations consist of mandatory consultations. One should not turn a blind eye on what this actually means: it does not involve “sharing or transferring decision-making authority to those who will be directly affected [...]. In contrast, consent does involve sharing or transfer of authority,” as Szablowski rightfully pointed out.³⁵

Canada’s neighbour is also worth mentioning in this regard. The United States has indeed similar obligations with regards to indigenous peoples, as provided under the *Federally Recognized Indian Tribe List Act of 1994*.³⁶ In the Southern hemisphere, Peru is another example in this regard. The country hosts 2.703 indigenous communities and has enacted the

³³ *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, section 35.

³⁴ *Ibid.*

³⁵ David Szablowski, “Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector? Examining the Challenges of a Negotiated Model of Justice” (2010) *Canadian Journal of Development Studies*, p. 117.

³⁶ *Federally Recognized Indian Tribe List Act of 1994*, 1994, 25 USC 4791.

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*Ley Forestal y de Fauna Silvestre N. 29763.*³⁷ In its Article 66, the law ensures access to forest and wildlife resources on native and rural community lands through a permit accreditation process, thus maintaining and preserving the eco-systems concerned.

3.2.2.2 Information Giving and Consultation

The second forms of engagement to be addressed will be the information giving and the consultations. At the national level, these forms may include government-led pre-CoP meetings helping better understand the priorities for IPLCs or sporadic or not institutionalised IPLCs-dedicated consultation mechanisms.

Despite recognising legal rights to IPLCs, some States have not actively sought to rely on IPLCs' input when implementing nationally the objectives of CITES. This is the case of the United States that has quite limited the input the IPLCs may be able to provide prior to CITES' CoP for instance. Under the U.S. current system, IPLCs' input is only considered during one pre-CoP meeting where they are only called upon to give their perspective to set the agenda of their State's priorities.³⁸

China also consults with IPLCs in a similar fashion to the U.S. When considering the drafting of legislative instruments to tackle the trade and conservation of endangered species, Beijing carries consultations in local communities to gather suggestions and opinions of relevant stakeholders, but no proper institutionalised consultation mechanism seems to exist, thus limiting the possible input IPLCs may give.³⁹ It should also be noted that China, as per the UN definition of indigenous peoples, does not consider that any community living on its territory falls within this definition.⁴⁰

Lesser extent involvement of IPLCs is also perceptible in certain mechanisms being implemented by Finland. The latter limits itself to hosting annual meetings with the Sámi people in order to consider their priorities, especially in the field of biodiversity and climate

³⁷ Ley Forestal y de Fauna Silvestre N° 29763, 2011.

³⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Questionnaire on engagement of indigenous peoples and local communities (U.S.)," [2020] p. 3, [Questionnaire: U.S.].

³⁹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Questionnaire on engagement of indigenous peoples and local communities (China)" [2020] p. 3.

⁴⁰ *Ibid.*, p. 1.

change.⁴¹ The U.S. has a similar practice in the sense that they established a public consultation process - not specifically dedicated to enhancing IPLCs' participation - during which the public may provide its input. This is conducted prior to attending the international CITES' meeting.⁴² This rather suggests a low level of involvement and participation from IPLCs.

3.2.2.3 Involvement

As for the form of engagement that is the involvement, it will be discussed how States are building on IPLCs-led initiative to achieve their national policies' objectives. This section will thus cover how IPLCs might be perceived as reliable partners by central governments as they are the eyes and ears on the ground.

In this regard, certain instruments being used to foster participation from IPLCs consists in the recognition of IPLCs' efforts to preserve the fauna and flora of a designated area by providing legal backing. This is notably the case under the CBD where States have been eager to explore the role which IPLCs Conservation and protection areas may play. States have thus been keen on enhancing IPLCs' contribution to their conservation objectives, such as in India or Benin.⁴³

In the case of India, the government created so-called "community reserves" by amending the Wildlife Protection Act of 1972, which ensures the involvement of the local communities with regards to the management of the protected areas.⁴⁴ This, however, ensures most certainly a more active participation of the local community. For instance, the Tiruvudaimarudur Conservation Reserve, a bird nesting area,⁴⁵ is the first of this kind in the country, and the village community is partnering up with the State authorities to manage the ecosystem of the reserve, thus fostering the inclusion and the know-how of the local communities. In a similar fashion, Benin has also indicated its desire to protect community sacred forests, thus contributing to highlight and make good use of the traditional knowledge and genetic resources

⁴¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora "Questionnaire on engagement of indigenous peoples and local communities (Finland)" [2020] p. 3

⁴² Convention on International Trade in Endangered Species of Wild Fauna and Flora, "Questionnaire on engagement of indigenous peoples and local communities (Canada.)" [2020], p. 3, [Questionnaire: Canada].

⁴³ John Scott, 2021. "The Convention on Biological Diversity: Indigenous Peoples and Local Communities and their effective participation", available online at: <http://nbsapforum.net/sites/default/files/CBD%20IPLC%20participation%20EN_0%20%281%29.pdf>, [Indigenous Peoples and Local Communities and their effective participation].

⁴⁴ *Ibid.*

⁴⁵ Government of Tamil Nadu Forest Department, 2022. "Tiruppadaimaruthur Birds Conservation reserve", available online at: <https://www.forests.tn.gov.in/pages/view/thiruppadaimaruthur_bcr>.

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of local communities in terms of environment protection.⁴⁶ This latter example could be considered to be fostering an intermediary level participation from IPLCs.

3.2.2.4 Collaboration and Empowerment

The engagement forms of collaboration and empowerment will now be assessed, and we have been able to identify further cases in which the participation of IPLCs being fostered was more aligned with the concept of “effective and meaningful” participation. This section will especially focus on greater forms of autonomy being granted to IPLCs as well as their full participation in decision-making processes.

Certain States have been eager to foster a higher level participation of IPLCs. For instance, IPLCs may be included in their State’s national delegation for CITES meetings for instance. This results in fostering, once again, a certain participation of IPLCs, as they are taking part into the work of CITES’ Working Groups as well as into the Conference of the Parties (CoP).⁴⁷ The level of involvement, however, remains to be seen as States maintain complete discretion as to the role it may give to IPLCs being part of the delegation. Nevertheless, IPLCs, once implicated in national delegation have the opportunity to durably shape a State’s position during the CoP meetings, but this influence is highly dependent on the level of collaboration being allowed by the State as mentioned above.

When considering higher levels of participation of IPLCs being fostered by States, one should note that when IPLCs are included in the decision-making process to consider whether or not to include certain species into the list of Endangered Species of their respective State, IPLCs’ input is particularly determinant on the outcome.⁴⁸

In this spirit, Canada established the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), an expert advisory body that relies heavily on the traditional knowledge of Inuit, as representatives of this community actively contribute to the work of the COSEWIC's Aboriginal Traditional Knowledge Subcommittee. The knowledge and expertise being shared by Inuit in this forum are being assessed in order to contribute to the classification

⁴⁶ *Indigenous Peoples and Local Communities and their effective participation*, supra note 43.

⁴⁷ *Questionnaire: Canada*, supra note 42, p. 8.

⁴⁸ *Ibid.*, pp. 7-8.

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process of endangered species and their inclusion into Canada's list of endangered species.⁴⁹ The COSEWIC has also set up the Aboriginal Traditional Knowledge Subcommittee, which is mainly composed of indigenous community members and is tasked with advising - like its name suggests - the COSEWIC on aboriginal traditional knowledge.⁵⁰ Unfortunately, the COSEWIC does not consider the input of local communities, but this might be explained by the particular situation of Canada where indigenous peoples are also considered as "local communities" as most of them live in rural and remote areas of the country.⁵¹

Furthermore, an intermediary level of participation of IPLCs being fostered through State practice is the use of different funding mechanisms. This will be further discussed in the subsequent section. However, it should be noted that Australia, through its efforts to implement the objectives of the CBD at the national level, created Indigenous Protected Areas that make up for 43.6 % of the entire network areas of the country and funds local management initiatives. Indeed, the State is providing yearly funding to the organisation responsible for overseeing the conservation efforts and is thus contributing in empowering IPLCs, more specifically indigenous communities.⁵²

Further, the case of Brazil is also worth mentioning in this regard. In fact, Brazil, to attain CBD objectives, has been setting local councils that will oversee the conservation work of each protected area on which local community representatives will be sitting, thus fostering further engagement of IPLCs in the conservation process. Brazil's Federal Law No. 9 985/2000, Article 15, para. 5, established these local councils on which civil society organisations, representatives of public agencies and residents of the communities concerned are sitting. This is the case for every protected area being created in the country.⁵³

Moreover, certain States have been eager to empower IPLCs not only by recognising the importance of their traditional knowledge, but have also granted the latter with a high level of autonomy to manage the conservation program dedicated to a certain species. This is notably

⁴⁹ *Ibid.*, p. 8.

⁵⁰ COSEWIC, 2022. "COSEWIC Aboriginal Traditional Knowledge Subcommittee: members", available at <<https://cosewic.ca/index.php/en-ca/about-us/cosewic-subcommittees/atk-subcommittee-members.html>>.

⁵¹ *Questionnaire: Canada, supra* note 42, p. 1.

⁵² *Indigenous Peoples and Local Communities and their effective participation, supra* note 43.

⁵³ *Law establishing the National System of Protected Areas Management*, Brazil Federal Law No. 9985/2000, 18 July 2000, Article 15, para. 5.

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the case of Canada with regards to the conservation of the polar bear, which Inuit enjoy exclusive right to harvest and use. In fact, Inuit representatives are sitting on two of the key national committees dedicated to the conservation and management of this species: the Polar Bear Administrative Committee (PBAC) - which oversees Canada's compliance with its obligations with regards to the conservation of the species - and the Polar Bear Technical Committee.⁵⁴ The latter has a mandate to review the scientific research and assess traditional indigenous knowledge to provide the PBAC with an annual status assessment of the polar bear management units throughout the country.

Once again, emphasis on the particular knowledge that indigenous peoples possess is essential in ensuring that their perspective is being considered. It is also a fundamental component of the protection strategy that is being implemented to ensure Canada complies with its obligations under CITES.⁵⁵

In addition, the First Nations and Métis groups are also involved in the commercial harvest of furbearer species, of which the wolf, northern river otter, lynx and bobcat are listed in CITES Appendix II. Further, one should be mindful that, for certain species, Canada may not unilaterally adopt a position as to invest dedicated resources to protect the latter or not. This is the case with the Polar bear -as mentioned above -, the narwhal, and the walrus, as they are considered essential species for Inuit.⁵⁶ Once again, this demonstrates a consultation obligation Canada must comply with rather than a genuine authority delegation to indigenous peoples.

In this regard, Peru has adopted a similar integration of IPLCs into its bodies overseeing the management of certain species. In fact, it has established the *Consejo Directivo del Servicio Nacional Forestal y de Fauna Silvestre*. The latter is administered by a council of 12 representatives, including two from indigenous peoples, one from rural communities living in the coastal regions, and one from the inner regions of the State.⁵⁷ Similar to Canada's endangered species' management's schemes, Peruvian indigenous and rural communities are also directly implicated in the management of certain species. The vicuna is one of them. Several rural communities are in charge of the production of the vicuna fibre in a sustainable

⁵⁴ *Questionnaire: Canada, supra* note 42, p. 7.

⁵⁵ *Ibid.*, p. 8.

⁵⁶ *Ibid.*, p. 2.

⁵⁷ *Ley forestal y de Fauna silvestre*, Ley N. 29763, 2015, Article 15.

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fashion as well as for the exportation of the latter, thus permitting a significant generation of revenues. This is even more remarkable when considering the absence of intermediaries that would ask for a share of the profit generated by this activity.⁵⁸

Now considering the U.S.' perspective, it has also established a species management system that ensures a certain degree of involvement of Indigenous communities. However, the level of autonomy indigenous peoples may enjoy is of lesser importance than in the previous examples. For instance, furbearers and ginseng are two species that are being co-managed between indigenous tribes and the federated States. They set up management and harvest programmes to ensure the sustainability of the species and must provide the federal government with the necessary information to ensure that the provisions of CITES are effectively implemented.⁵⁹

After having discussed the main participation mechanisms being relied upon either by international instruments and States, this report will discuss the technical assistance and capacity building tools that have been developed over time.

3.2.3 Recommendations to the CITES

Several engagement mechanisms have been considered in this section, both stemming from international conventions and States' practice. Understanding that drafting any sort of binding legal provisions under the CITES would require the consent of the parties, we, however, suggest CITES' Secretariat to consider the following recommendations, and to promote the latter to encourage member States to foster enhanced participation of IPLCs. The last recommendation of this section will surely create divisions among States parties, but we believe that it could actively contribute in attaining an "effective and meaningful" participation of IPLCs as suggested by the UN Secretary-General. Here are the three recommendations we suggest implementing:

⁵⁸ Convention on International Trade in Endangered Species of Wild Fauna and Flora "Questionnaire on engagement of indigenous peoples and local communities (Peru)" [2020] pp. 6-7.

⁵⁹ *Questionnaire: U.S.*, *supra* note 38, p. 2.

Encourage States to establish consultation mechanisms that will seek the free prior and informed consent of IPLCs for every decisions that might affect them, thus ensuring their participation is effective and meaningful. This should be a paramount criteria to respect.

Guide States in granting more autonomy to IPLCs in the management of endangered species so they are not seen anymore only as potential partners, but rather as experts in their field that ought to take part actively in the decision-making process.

Suggest to member States a complete overhaul process that will seek to restructure the matter in which an entity can become party to the Convention, thus seeking to include more IPLCs representatives in the decision-making process of the CITES.

After having discussed the main participation mechanisms being relied upon either by international instruments and States, this report will discuss the technical assistance and capacity building tools that have been developed over time.

3.3 Technical Assistance and Capacity Building

Developing a good relationship with IPLCs is essential for an effective partnership in terms of participation and consultation. We can see that these groups have not historically benefited from negotiations with outsiders, mostly due to the fact that they unknowingly found themselves in unequal and unbalanced exchange of resources and information.⁶⁰ With that in mind, this chapter brings about a Third Pillar on Technical Assistance and Capacity Building aiming to recommend ways CITES Member States can support and strengthen the skills and resources of IPLCs in order to balance the scale.

⁶⁰ Chicchón A, 'Working with Indigenous Peoples to Conserve Nature: Examples from Latin America' (2009) 7 Conservation and Society 15 <<https://www.jstor.org/stable/26392958>> accessed 3 April 2022.

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The Third Pillar seeks to answer the question “*what are the types of technical assistance and capacity building?*”. Drawing the best practices of a sample of national, regional and international conventions and organisations, three main types can be highlighted:

- I. Information access and exchange;
- II. Education and training;
- III. Capacity building.

3.3.1 Information Access and Exchange

The implementation of mechanisms to facilitate a more open exchange and access of information between CITES member States and IPLCs can greatly benefit both parties.

As seen in CITES’ Preamble, the contracting States recognise that the wild fauna and flora are “an irreplaceable part of the natural systems of the earth”, which must be protected against over-exploitation by peoples and States through international cooperation.⁶¹ As rightly mentioned by Avecita Chicchón, “partnerships with indigenous peoples are essential to succeed in conservation as indigenous peoples are the main stewards of biodiversity in wilderness areas”.⁶²

The *Americas Flyways Framework* of the CMS includes Strategic Goal 4 to “enhance the benefits to all from biodiversity, ecosystem services and migratory birds”.⁶³ Within the Goal, the Framework establishes Action 12 with the purpose of empowering IPLCs to better conserve their reservoirs. The idea behind this is to provide these groups with the tools, knowledge and means to enable them to protect and manage their natural resources, which in turn benefits not only their communities but also biodiversity as a whole.

⁶¹ ‘Convention on International Trade in Endangered Species of Wild Fauna and Flora | CITES’ <<https://cites.org/eng/disc/text.php>> accessed 3 April 2022.

⁶² Chicchón A, ‘Working with Indigenous Peoples to Conserve Nature: Examples from Latin America’ (2009) 7 *Conservation and Society* 15 <<https://www.jstor.org/stable/26392958>> accessed 3 April 2022.

⁶³ ‘Americas Flyways Framework: A Framework for the Conservation of Migratory Birds in the Americas | CMS’ <<https://www.cms.int/en/document/americas-flyways-framework-framework-conservation-migratory-birds-americas>> accessed 3 April 2022.

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The *Programme of Work on Migratory Birds and Flyways* of CMS⁶⁴ thus foresees that the empowerment mechanism can be implemented through:

- I. Close communication and consultation with IPLCs to ensure the plans and actions adequately take into consideration local needs and priorities;
- II. Organisation of capacity building workshops to strengthen the Parties' abilities to implement the Programme;
- III. Recognition of the knowledge, innovations and practices of IPLCs for a more participatory environmental governance.

Even though the document does not elaborate further on the mechanisms that can be applied, neither does it provide a feedback on States that have decided to implement them, IPLCs have historically acted as primary custodians of forests and their wildlife, possessing the knowledge to not only sustainably use and conserve forest biodiversity for future generations, but also harvest them for trade.⁶⁵ They face critical socio-economic and political challenges, and a mechanism to empower these communities on how to deal with such issues can result in a mutually beneficial exchange and access of information.

The benefits of a close communication for information access and exchange was already highlighted by a number of States in the *Questionnaire on Engagement of Indigenous Peoples and Local Communities* shared by CITES. For example, Botswana emphasised that the San people are very knowledgeable and skilled in areas such as traditional medicine, arts and craft, tracking and tracing, and rock paintings. Due to this, they are employed by community based organisations during hunting season to escort hunters.

In the same Questionnaire, Canada informed the importance of information giving in the engagement of IPLCs. The State considers their knowledge to be essential to ensure wildlife conservation, specially in collecting, harvesting and hunting.

⁶⁴ 'Programme of Work on Migratory Birds and Flyways (2014 - 2023) | CMS' <<https://www.cms.int/en/document/programme-work-migratory-birds-and-flyways-2014-2023>> accessed 3 April 2022.

⁶⁵ 'Rethinking Conservation for People and Nature' <https://wwf.panda.org/wwf_news/?395791/Rethinking-conservation-for-people-nature> accessed 3 April 2022.

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Kenya also expressed the importance of information exchange with IPLCs for reporting on illegal wildlife dealing in their respective areas. All these examples show the importance of partnerships with IPLCs not only for the conservation of biodiversity but also for the exchange of knowledge that can benefit all parties involved.

Furthermore, information access and exchange with IPLCs has shown to be successful in the UNESCO mandate, since the organisation works to “ensure the dialogue and co-production of knowledge between indigenous peoples and scientists” to identify, understand and address several challenges faced by the world today, including environmental, cultural and societal.⁶⁶ This partnership helped improve mutual respect and to create the so-called knowledge systems for the exchange of information.

3.3.2 Education and Training

Teaching and training IPLCs to help them navigate the social and political constraints faced can build a more solid partnership and guarantee their fruitful participation.

WCS provides technical advice to address threats to conservation that can be managed by IPLCs. Undoubtedly these groups possess a deep knowledge of forests and wildlife, essential for their sustainable use and conservation, but it has become clear each day that “it is not only enough to document biodiversity and its use but it is also important to contribute to the empowerment of the direct users to manage biodiversity in sustainable ways”.⁶⁷

WCS shows that the empowerment of IPLCs in the education and training aspect can include, but are not limited to:

- I. Projects to manage domestic animals and avoid the spread of diseases to wildlife;
- II. Educational activities.

Once again, the use of broad terms by organisations in describing their activities does not allow a very clear understanding of what the mechanisms should entail. However, analysing the

⁶⁶ ‘UNESCO Policy on Engaging with Indigenous Peoples’ (UNESCO, 3 September 2017) <<https://en.unesco.org/indigenous-peoples/policy>> accessed 1 May 2022.

⁶⁷ Chicchón A, ‘Working with Indigenous Peoples to Conserve Nature: Examples from Latin America’ (2009) 7 Conservation and Society 15 <<https://www.jstor.org/stable/26392958>> accessed 3 April 2022.

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practice it is possible to see that the goal is to equip IPLCs with the necessary skills to negotiate and decide for themselves in matters that directly concerns them.

For example, the partnership between WCS and the indigenous people Guaraní in Brazil shows the positive results of teaching and training IPLCs to deal with social and political constraints. In this case, corporations sought to develop their land for the Bolivia-Brazil gas pipeline and the partnership successfully negotiated with the pipeline sponsors to ensure that environmental and socioeconomic impacts were mitigated, as well as an agreement on the establishment of a permanent source of revenue for the protected area was included.⁶⁸ The partnership was so effective that the Guaraní were able to decide themselves how the revenue of the trust fund was to be allocated for better conservation and sustainable development.⁶⁹

UNESCO undertakes training activities for the preservation of cultural and natural properties of concern to the WHC called the *Global Training Strategy*.⁷⁰ The activities are attempted taking into consideration International Assistance requests of inclusive nature with the involvement of IPLCs.

The activities include educational programmes with the purpose of promoting the use of local materials and resources, the use of local cultural and creative industries, as well as safeguarding intangible heritage. The activities also include research, due to knowledge and understanding being fundamental to the identification, management, and monitoring of World Heritage properties.

The *Global Training Strategy* established priority actions to make the activities more effective, which include:

- I. Establishment of a network of existing international/regional/national training institutions;

⁶⁸ Redford KH and Painter M, 'Natural Alliances between Conservationists and Indigenous Peoples Wildlife' <<https://library.wcs.org/doi/ctl/view/mid/33065/pubid/DMX152550000.aspx>> accessed 3 April 2022.

⁶⁹ *Ibid.*

⁷⁰ Centre UWH, 'UNESCO World Heritage Centre - Document - Training Strategy; Global Training Strategy' (UNESCO World Heritage Centre) <<https://whc.unesco.org/en/documents/1064/>> accessed 5 April 2022.

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- II. Development of a series of off-the-shelf training modules and supporting materials to improve implementation of the Convention;
- III. Development of simplified “technical notes” and advice.

Not only that, but UNESCO also works with a project that it calls Inclusive Knowledge Societies.⁷¹ The goal is for people to have the capabilities not just to acquire information but also to transform it into knowledge, since the organisation believes that free flow of information is essential to human progress.

The success of this project in terms of information access and exchange with IPLCs can be seen in the community radio broadcasts that UNESCO supports and promotes in order to allow indigenous peoples to participate in public debate and transmit their own culture, information and knowledge, reaching out to people with little or no access to information in different local languages (including indigenous languages).⁷²

In an interview with Ms. Fei Jiao, program officer in the Traditional Knowledge Division of WIPO, she kindly informed that the organisation has been developing several activities to improve IPLCs engagement. On the education aspect, Ms. Jiao mentioned the IPLCs Youth Project to encourage young people to take pictures of their community and participate in a competition. The result of this is that WIPO then offers free copyright training for those who have submitted the photos.

Furthermore, four years ago WIPO launched a training project for women entrepreneurs to support and train them how to use intellectual property in their business. According to Ms. Jiao, the interested women inform which project they are working on, and that they are in need of support. Then WIPO chooses about 20 to 24 participants to offer training on basic intellectual property and how to use it in their business. The organisation also educates these women on soft skills in business, such as communication and management of projects.

However, Ms. Jiao was very clear about the challenges faced by WIPO in the application of those projects. For example, the women entrepreneurs program faces a big issue of dealing

⁷¹ ‘UNESCO Policy on Engaging with Indigenous Peoples’ (*UNESCO*, 3 September 2017) <<https://en.unesco.org/indigenous-peoples/policy>> accessed 1 May 2022.

⁷² *Ibid.*

with the needs of indigenous women who are mothers, and moving to Geneva for the program in person is quite difficult.

3.3.3 Capacity building

The implementation of mechanisms to build capacity between CITES Members and IPLCs can help significantly improve inclusion and participation of the latter groups.

The *Americas Flyways Framework* of the CMS includes Strategic Goal 5 to “enhance implementation through capacity building”.⁷³ Within the Goal, the Framework establishes Action 15 with the purpose of building capacity through the sharing of best practices, lessons, relevant scientific and technical issues, international initiatives and processes, as well as providing guidance and input.

The *Programme of Work on Migratory Birds and Flyways* of CMS⁷⁴ establishes that capacity building mechanisms can be implemented through, for example, organised workshops to strengthen the Parties’ abilities to implement the Programme.

CMS does not elaborate further on what the mentioned capacity building activities can achieve in practice, in terms of effectiveness. However, taking into consideration the recommendation of sharing technical issues and providing guidance and input, examples can be found in other organisations activities.

For example, the WCS *Capacity Building Project* for a joint conservation program aims to teach and prepare IPLCs to deal with bureaucracies and administrative issues, so they can learn how to apply for support both internally and internationally. This is particularly essential when thinking about conferences or meetings on topics of relevance for IPLCs, in which to ensure their participation in the decision-making process it is necessary arranging funds for transportation, stays and others.

⁷³ ‘Americas Flyways Framework: A Framework for the Conservation of Migratory Birds in the Americas | CMS’ <<https://www.cms.int/en/document/americas-flyways-framework-framework-conservation-migratory-birds-americas>> accessed 3 April 2022.

⁷⁴ ‘Programme of Work on Migratory Birds and Flyways (2014 - 2023) | CMS’ <<https://www.cms.int/en/document/programme-work-migratory-birds-and-flyways-2014-2023>> accessed 3 April 2022.

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WCS shows that the ability of IPLCs to manage funds and administrate projects provides them the opportunity to apply for external funds on their own and be more independent in their participation capabilities.⁷⁵

The partnership between WCS and the indigenous peoples Isoseño-Guaraní in the Gran Chaco and Tacana in Madidi has proved successful in terms of capacity building when both groups managed to secure legal rights over their indigenous territories that preserve core protected areas.⁷⁶ The WCS provided the necessary technical support to these indigenous groups and the Guaraní have a clear mandate of managing the Kaa-Iya National Park, located in Santa Cruz, while the Tacana control the protected areas of the Madidi National Park, since they are titled indigenous territories under their management.⁷⁷

In an interview with Ms. Fei Jiao, program officer in the Traditional Knowledge Division of WIPO, she kindly shared capacity building projects developed by the organisation for better engagement with IPLCs. One of the examples she gave was the Fellowship for IPLCs, where representatives of the communities work with WIPO for two years in order to learn how to deal with issues such as bureaucracies, inclusion, representation, rights, among others. The fellows then go back to their communities and put in practice the knowledge acquired, as happened with one of the fellows that went back to Sweden to help the Sami people.

Ms. Jiao emphasised the success and impact of the Fellowship program, with fellows now working in different organisations and countries, empowered and aware of issues of relevance to IPLCs. However, she also understands the challenges encountered by the program, such as limited funding and language barriers. For the latter, Ms. Jiao informed WIPO tries to create a language package of materials with basic information, and to translate as many documents as possible, as they did with Kenya, Bhutan and now with Cambodia.

⁷⁵ Chicchón A, 'Working with Indigenous Peoples to Conserve Nature: Examples from Latin America' (2009) 7 Conservation and Society 15 <<https://www.jstor.org/stable/26392958>> accessed 3 April 2022.

⁷⁶ Arambiza E and Painter M, 'Biodiversity Conservation and the Quality of Life of Indigenous People in the Bolivian Chaco' (2006) 65 Human Organization 20 <<https://www.jstor.org/stable/44127119>> accessed 1 May 2022.

⁷⁷ Chicchón A, 'Working with Indigenous Peoples to Conserve Nature: Examples from Latin America' (2009) 7 Conservation and Society 15 <<https://www.jstor.org/stable/26392958>> accessed 3 April 2022.

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In the same line, UNESCO's *Global Training Strategy* for the preservation of cultural and natural properties of concern to the WHC⁷⁸ – which, as seen above, takes into consideration International Assistance with the involvement of IPLCs – has the primary goal to ensure that necessary skills are developed by a wide range of actors for better implementation of the Convention.

The *Global Training* established priority actions to make the strategies more effective, which include:

- I. National training of States' professionals and specialists;
- II. Development of national training strategies by States;
- III. Inclusion of regional cooperation for training between States;
- IV. Review of training issues and assessment of training needs by States;
- V. Review of annual reports on training initiatives;
- VI. Recommendations for future training initiatives.

UNESCO's main goal is to train actors to develop the necessary skills to better implement the Convention, which is an important mechanism for capacity building not only of IPLCs but also States and other entities. However, the training requires effective cooperation between international, regional and national actors, which would have to work together to develop strategies, train staff, draft recommendations and review reports. It is hard to visualise the implementation of these mechanisms without the proper funding, which is an important element to take into consideration at all levels. Due to this, a Fourth Pillar to analyse this matter will be further discussed below.

3.3.4 Recommendations to the CITES

Although CITES also has tools for the engagement of IPLCs in what concerns technical assistance and capacity building, such as the participation of these groups in training, harvesting, processing and trade, it is a challenge to make these projects viable. Improvements can be applied in the CITES-system to make the empowerment of IPLCs more effective. Accordingly, this report makes three recommendations:

⁷⁸ Centre UWH, 'UNESCO World Heritage Centre - Document - Training Strategy; Global Training Strategy' (UNESCO World Heritage Centre) <<https://whc.unesco.org/en/documents/1064/>> accessed 5 April 2022.

Request government support to help IPLCs navigate complex administrative procedures and planning by developing more supportive legislation to include technical advice and assistance, training and capacity building.

Develop programs to train and empower IPLCs in the world of sustainable trade of flora and fauna, in a way to allow the exchange of knowledge and information between these groups and CITES.

Empower IPLCs with the necessary training and skills to deal with issues concerning their proper inclusion and engagement in both the national and international spheres, with conditions clearly articulated and understood, in

3.4 Funding Mechanisms

Funding is crucial to ensure the participation of IPLCs, to provide technical assistance and to build capacity for IPLCs. Many IPLCs mentioned that they encountered insurmountable difficulties in funding the travel and accommodation costs of their representatives to join meetings and events.⁷⁹ As reflected in the responses to the CITES Questionnaires on Engagement with IPLCs, low fund availability is one of the main challenges faced in enhancing the participation of IPLCs.⁸⁰ States, including Cambodia, Canada, Kenya, Namibia, and Nigeria, all stressed that there is a particular sense of urgency in increasing fund availability.⁸¹

This section aims to conduct a comprehensive study with the goal of identifying the best practice regarding the Fourth Pillar, funding mechanisms. Funding mechanisms can be categorised into two types: mandatory or voluntary funding mechanisms. Mandatory funding mechanisms mean that the Member States are obliged to pay contributions.⁸² Contrary to imposing compulsory obligations, voluntary funding mechanisms encourage or invite the Member States to provide financial support. Considering that it is practically impossible for

⁷⁹ 'WIPO Voluntary Fund for Accredited Indigenous and Local Communities.' <https://www.wipo.int/export/sites/www/tk/en/igc/pdf/flyer_vol_fund.pdf> accessed 5 April 2022.

⁸⁰ 'OwnCloud - A Safe Home for All Your Data' (*ownCloud*) <<http://owncloud.unog.ch/s/IBALBemHt7FMgKn>> accessed 4 April 2022.

⁸¹ *Ibid.*

⁸² UNESCO World Heritage Centre, 'Convention Concerning the Protection of the World Cultural and Natural Heritage' (*UNESCO World Heritage Centre*) <<https://whc.unesco.org/en/conventiontext/>> accessed 5 April 2022.

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CITES to force the Member States to pay contributions, mapping results and corresponding analysis below will only cover voluntary funding mechanisms.

Bearing in mind that this report focuses on how to engage IPLCs effectively, the mapping examined voluntary funding mechanisms of organisations or programmes specifically designed for protecting IPLCs, including the UN Voluntary Fund for Indigenous People (UN Voluntary Fund), WIPO Voluntary Fund for Accredited Indigenous and Local Communities (WIPO Voluntary Fund), UN Indigenous People's Partnership, and International Work Group for Indigenous Affairs (IWGIA). This section also considered innovative voluntary funding mechanisms established by other general organisations or conventions, such as WHC, UNDP Small Grants Program, CMS, and Indigenous Peoples Assistance Facility (IPAF). Although these organisations or conventions do not target protecting IPLCs, their operations or provisions do involve the participation of IPLCs, from which this section could also draw lessons.

Building off these landmark mechanisms, this section will figure out the best structure of voluntary funding mechanisms by answering two guiding questions:

- I. What is the end use of the received funds?
- II. What are the sources of funds?

3.4.1 End Use of Received Funds

Distribution and allocation of funds are potential factors affecting the willingness of donors to make contributions. Drawing lessons from the best international practices, the end use of the funds can be categorised into two types:

- I. Funds were used for enhancing the participation of IPLCs in meetings and events.
- II. Funds were used for supporting projects that provide technical assistance and build the capacity of IPLCs.

3.4.1.1 For Enhancing the Participation of IPLCs in Meetings and Events

Direct representation in international mechanisms and processes empowers IPLCs to shape their own futures and ensure the protection and recognition of their fundamental human rights. Many representatives of IPLCs, however, have stressed that they have endured

disproportionate logistical difficulties when seeking to participate in multilateral meetings: many communities lack funds for travel and accommodation of their representatives. Increased efforts to address this problem led to collecting money in support of indigenous participation in the United Nations and international processes.

The UN Voluntary Fund, for instance, awards travel grants to representatives of indigenous peoples' organisations to travel and participate in new UN mechanisms, sessions, and processes, including the UN Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, and Expert Mechanism on the Rights of Indigenous Peoples.⁸³ Approved participation grants include a round-trip air ticket in economy class from the beneficiary's hometown to Geneva or New York and a daily subsistence allowance for the days of the session.⁸⁴ The UN Voluntary Fund is administered by the Secretary-General in accordance with the relevant financial rules and regulations of the United Nations on general trust funds for humanitarian assistance, and with the advice of a Board of Trustees. The Board, appointed by the ⁸⁵Secretary-General, is composed of five persons with relevant experience on issues affecting indigenous peoples, who serve in their personal capacities as United Nations experts. Same as the UN Voluntary Fund, WIPO Voluntary Fund covers the purchase of a return economy class ticket by the cheapest route, as well as a daily allowance or fixed stipend to facilitate the participation of IPLCs in intergovernmental committees meetings.⁸⁶ The Advisory Board nominates the beneficiaries of support from the Fund. The Advisory Board comprises nine members, including the Chair of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC Committee), delegations of the Member States of the Committee, and three members from accredited observers representing IPLCs.⁸⁷

Compared with other voluntary funding mechanisms, the UN Voluntary Fund and WIPO Voluntary Fund have merits in the selection process of beneficiaries, which ensures the

⁸³ 'OHCHR | UN Voluntary Fund for Indigenous Peoples' (*OHCHR*) <<https://www.ohchr.org/en/about-us/funding-budget/indigenous-peoples-fund>> accessed 2 May 2022.

⁸⁴ 'Status of the United Nations Voluntary Fund for Indigenous Peoples.Pdf' 3 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/192/75/PDF/N2019275.pdf?OpenElement>> accessed 2 May 2022.

⁸⁵ 'OHCHR | UN Voluntary Fund for Indigenous Peoples' (*OHCHR*) <<https://www.ohchr.org/en/about-us/funding-budget/indigenous-peoples-fund>> accessed 5 June 2022.

⁸⁶ 'WIPO Voluntary Fund for Accredited Indigenous and Local Communities.Pdf' (n 79).

⁸⁷ 'WIPO Voluntary Fund for Accredited Indigenous and Local Communities Questions and Answers.pdf.Pdf' <https://www.wipo.int/export/sites/www/tk/en/igc/pdf/q_and_a.pdf> accessed 5 June 2022.

geographical, gender, and age balance and pays special attention to indigenous people with disabilities.⁸⁸ The UN Voluntary Fund shows its unique advantage in establishing procedures to monitor the attendance and contributions of the beneficiaries closely.⁸⁹ It guarantees that selected representatives of IPLCs really benefited from the UN Voluntary Fund and then contributed to protecting their values as expected. The WIPO Voluntary Fund, instead, created operation guidelines to improve its transparency, independence, and efficiency. For example, it prohibits the deduction from the WIPO Voluntary Fund for administrative costs. The members of the intergovernmental meetings are not paid or compensated for the tasks they carry out.⁹⁰

Over the years, these two mechanisms both have witnessed great success. The UN Voluntary Fund has assisted approximately 2,000 indigenous people, who have been historically excluded from decision-making processes, to participate in UN meetings where issues affecting their lives have been discussed.⁹¹ It has contributed to increases in the participation of IPLCs' representatives, the use of UN human rights and indigenous-specific mechanisms, and the international standards set with respect to the implementation of the UN Declaration on the Rights of Indigenous Peoples.⁹² The WIPO Voluntary Fund has collected around 711,892.37 Swiss francs to host 75 different representatives of IPLCs since its inception in 2005.⁹³ It has enabled IPLCs to work together peacefully and in partnership with States to advance their issues and rights.

Though great success has been achieved, States lost interest in assisting IPLCs to attend meetings. The WIPO Voluntary Fund was unable to finance any recommended applicant after

⁸⁸ 'WIPO Voluntary Fund for Accredited Indigenous and Local Communities Questions and Answers.pdf' <https://www.wipo.int/export/sites/www/tk/en/igc/pdf/q_and_a.pdf> accessed 5 June 2022.

⁸⁹ 'Status of the United Nations Voluntary Fund for Indigenous Peoples.Pdf' <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/192/75/PDF/N2019275.pdf?OpenElement>> accessed 2 May 2022.

⁹⁰ 'Participation of Indigenous and Local Communities: Voluntary Fund.Pdf' <https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_40/wipo_grtkf_ic_40_3.pdf> accessed 2 May 2022.

⁹¹ 'OHCHR | How to Contribute to the UN Voluntary Fund for Indigenous Peoples' (OHCHR) <<https://www.ohchr.org/en/about-us/funding-budget/indigenous-peoples-fund/how-contribute-un-voluntary-fund-indigenous-peoples>> accessed 2 May 2022.

⁹² 'Status of the United Nations Voluntary Fund for Indigenous Peoples.Pdf' <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/192/75/PDF/N2019275.pdf?OpenElement>> accessed 2 May 2022.

⁹³ 'New Contributions to the WIPO Voluntary Fund' <https://www.wipo.int/tk/en/news/igc/2019/news_0011.html> accessed 2 May 2022.

years of operations due to a lack of fresh contributions.⁹⁴ The governments of Australia and Germany even requested to reimburse their contributions because there were no physical meetings during these two years because of the pandemic. Nowadays, States lose trust in multilateral negotiation where political factors play an important role. They shifted from such international forums to “project-based funds.”

3.4.1.2 Project-Based Funds

IPLCs have endured centuries of marginalisation and exclusion, and many of them continue to find themselves among the poorest and most vulnerable. Entrenched discrimination and indigenous peoples’ socio-economic position frequently compromise their access to basic services such as education and healthcare. Given that, the funds are allocated to support projects which provide technical assistance and capacity building for IPLCs.

For example, the IPAF is an innovative funding instrument to finance small projects that foster the self-driven development of indigenous communities. The IPAF comprises three main components: empowering IPLCs’ grassroots organisations, strengthening IPLCs’ networks, and linking them with the global indigenous movement as well as knowledge management. It supports projects designed and implemented by IPLCs through small grants ranging from US\$20,000 to US\$50,000 for a maximum duration of two years (See Table 1).⁹⁵ Supported projects build on indigenous peoples’ culture, identity, knowledge, and natural resources.⁹⁶ The assessment of the performance of the fourth IPAF cycle reveals that IPAF has contributed to improving the livelihood of IPLCs in the following areas: improving sustainable agricultural practices, developing capacity for IPLCs’ rights, empowering indigenous women, boosting disaster and climate change risk management based on traditional knowledge and practices, and preserving local varieties of traditional crops.⁹⁷

⁹⁴ ‘WIPO Voluntary Fund for Accredited Indigenous and Local Communities: Information Note on Contributions and Applications for Support’ <https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=563112> accessed 2 May 2022.

⁹⁵ ‘Indigenous Peoples Assistance Facility’ (IFAD) <<https://www.ifad.org/en/ipaf>> accessed 2 May 2022.

⁹⁶ ‘Indigenous Peoples Assistance Facility’ (IFAD) <<https://www.ifad.org/en/ipaf>> accessed 2 May 2022.

⁹⁷ ‘The Indigenous Peoples Assistance Facility (IPAF) ASSESSMENT OF THE PERFORMANCE OF THE FOURTH IPAF CYCLE’ <https://www.ifad.org/documents/38714170/41013759/IPAF_report_e_web.pdf/7f262882-599e-dc77-d85e-a89996583b05?t=1549875791000> accessed 2 May 2022.

Country	Implementing organization	Title of project	Project area of support	Budget (US\$)
Africa				
Botswana	Community Connections Botswana (CCB)	Promotion and documentation of preservation of traditional Ikalanga foods using indigenous knowledge	Food security/nutrition; Climate change	48,200
Cameroon	Centre d'Appui aux Femmes Et aux Ruraux (CAFER)	Improving the livelihoods of Bedzang populations in the Tikar plain	Land, territories, resources; Access to markets; Climate change; Food security/nutrition	48,000
Democratic Republic of the Congo	Collectif pour les peuples autochtones au Kivu (CPAKI)	To empower the households of indigenous people from Kalonge and Bunyakiri through beekeeping in the province of South Kivu	Land, territories, resources; Access to markets; Climate change; Food security/nutrition	37,000
Ethiopia	DERE Integrated Development Action/Development Action	Improving the livelihood of the women of southwest Ethiopia who depend on enset crop	Food security/nutrition	35,000
Morocco	La Voix de la femme amazighe (IMSLI) amazighe (IMSLI)	Economic integration of the indigenous women in Morocco in support of the marketing of regional products	Access to markets	48,200
Rwanda	Organization for Support to the Environment Protection and Climate Change Adaptation (OSEPCCA)	Strengthening socio-economic and nutritional capacity of indigenous Batwa to achieve food security	Food security/nutrition	46,400
Tanzania	Ujamaa Resource Community Team (URCT)	Securing land and natural resources for the Hadzabe of northern Tanzania	Land, territories, resources; Food security/nutrition	48,200
Uganda	Institute of Tropical Forest Conservation (ITFC)	Building capacity of the Batwa for sustainable income-generating enterprises using cultural values approach	Land, territories, resources; Access to markets; Food security/nutrition	39,000

Table 1: IPAF Selected Projects

Like the IPAF, the UNDP Small Grants Program aims to provide financial and technical support to projects that conserve and restore the environment while enhancing people's well-being and livelihoods.⁹⁸ The programme provides grants up to US\$50,000 directly to local communities, including indigenous people, community-based organisations, and other non-governmental groups, for projects in biodiversity, climate change mitigation and adaptation, land degradation, and sustainable forest management.⁹⁹ A report published by UNDP recognized that the Small Grants Program's community-based approach to providing innovative, flexible, and responsive finance to indigenous peoples provides valuable lessons to the growing interest amongst international donors in partnering with indigenous peoples.¹⁰⁰

3.4.2 Sources of Funds

This section seeks to answer who the donors are and figure out what the best practice in this field is. As reflected in Table 2, sources of funds include the Member States, international organisations, public and private entities, and self-supporting activities. For example, the UN

⁹⁸ 'Welcome to The GEF Small Grants Programme' <<https://sgp.undp.org/>> accessed 5 April 2022.

⁹⁹ 'About Us' <<https://sgp.undp.org/about-us-157.html>> accessed 7 April 2022.

¹⁰⁰ 'Small Grant Programme 25 Years of Engagement with Indigenous Peoples.Pdf' <<https://www.undp.org/sites/g/files/zskgke326/files/publications/undp-gef-sgp-25-years-of-engagement-with-indigenous-peoples.pdf>> accessed 2 May 2022.

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Voluntary Fund and WIPO Voluntary Fund do not put restrictions on who may contribute, their fund resources came from governments, international organisations, and public and private entities (e.g., non-governmental organisations, corporations, and individuals).¹⁰¹

Table 2: Sources of Funds				
	Governments	IOs	Public and Private Sectors	Self-Supporting Activities
International Organisations/Conventions Specifically Designed for IPLCs				
UN Voluntary Fund	√	√	√	×
WIPO Voluntary Fund	√	√	√	×
UN Indigenous People's Partnership	√	√	×	×
IWGIA	√	√	√	×
Other International Organisations/Conventions Involving the Participations of IPLCs				
UNDP Small Grants Program	×	×	√	×
WHC	√	√	√	√
CMS	√	√	√	√

It is worth noting that the **Member States** are always the main donors for international organisations or conventions. Among all States, Switzerland, Australia, Finland, Germany, and Norway are active players in this field. For instance, 96% of the fund resources of the WIPO Voluntary Fund came from WIPO's Member States.¹⁰² As evident in Chart 1, Switzerland, Australia, Norway, France, South Africa, Canada, Finland, Germany, and New Zealand are major players in this field. The UN Voluntary Fund invited all actors to contribute to the fund annually. Contributions by Australia, Chile, Finland, Germany, Mexico, Holy See, Norway, and Peru, account for the biggest boon to the UN's efforts to ensure the widest possible

¹⁰¹ 'WIPO Voluntary Fund for Accredited Indigenous and Local Communities: Information Note on Contributions and Applications for Support' <https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=563112> accessed 2 May 2022.

¹⁰² 'WIPO Voluntary Fund for Accredited Indigenous and Local Communities: Information Note on Contributions and Applications for Support' <https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=563112> accessed 2 May 2022.

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participation of IPLCs.¹⁰³ Moreover, the WHC has received voluntary contributions from Brazil, Bulgaria, Cabo Verde, Denmark, France, Germany, Holy See, and Norway. The World Heritage Committee shall decide the allocation of the fund for a specific programme or project.¹⁰⁴ The World Heritage Committee is composed of 15 States Parties, elected by States Parties to the Convention meeting in the General Assembly during the ordinary session of the General Conference of the UNESCO.¹⁰⁵

WIPO Voluntary Fund

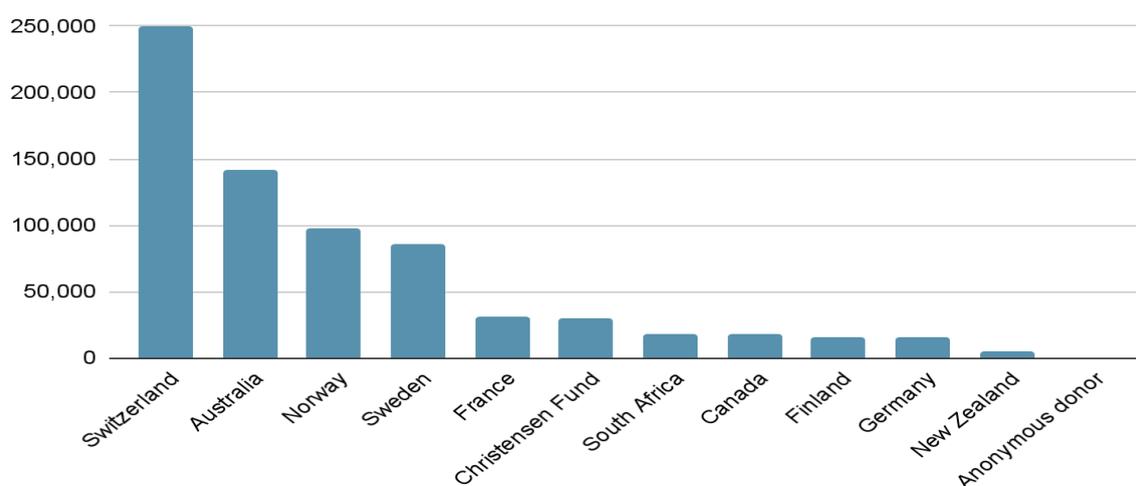


Chart 1: Contributions to WIPO Voluntary Fund¹⁰⁶

Although many funding mechanisms list **international organisations** as contributors, donations from these organisations only account for a small proportion. Article 16 of the World Heritage Convention provides that resources of the World Heritage Fund shall consist of contributions, gifts, or bequests that may be made by UNESCO, or other organisations of the United Nations system, particularly the UNDP.¹⁰⁷ Under UN Indigenous People's Partnership (UNIPP), UNICEF, UNFPA, OHCHR, UNDP, and ILO have contributed to the UNIPP's Multi-Donor Trust Fund.¹⁰⁸

¹⁰³ 'OHCHR | How to Contribute to the UN Voluntary Fund for Indigenous Peoples' (OHCHR) <<https://www.ohchr.org/en/about-us/funding-budget/indigenous-peoples-fund/how-contribute-un-voluntary-fund-indigenous-peoples>> accessed 2 May 2022.

¹⁰⁴ Article 14.4 of the World Heritage Convention.

¹⁰⁵ Article 8.1 of the World Heritage Convention.

¹⁰⁶ Article 8.1 of the World Heritage Convention.

¹⁰⁷ Centre (n 82).

¹⁰⁸ 'Trust Fund Factsheet - UN Indigenous Peoples' Ptnrshp' <<https://mptf.undp.org/factsheet/fund/IPP00>> accessed 5 April 2022.

Among all **public and private entities**, trust funds play a prominent role in contribution. For example, the Global Environment Facility (GEF) is the largest multilateral trust fund, focusing on enabling developing countries to invest in nature and supporting the implementation of major international environmental conventions including conventions on biodiversity, climate change, chemicals, and desertification.¹⁰⁹ Since 1992, the GEF has provided close to US\$20.5 billion in grants and mobilised an additional US\$112 billion in co-financing for more than 4,800 projects in 170 countries.¹¹⁰ The UNDP Small Grant Program mentioned above is funded exclusively by the GEF.¹¹¹ The Christensen Fund works to support indigenous peoples in advancing their inherent rights, dignity, and self-determination. It donated around 30,000 Swiss francs to the WIPO Voluntary Fund.¹¹²

Unlike international organisations and conventions, most NGOs always treat public and private entities as the leading donors. Wild Conservation Society (WCS) and the International Work Group for Indigenous Affairs (IWGIA) both established a specific page for donations on their official website. Anyone can provide financial support through a simple click of the “donate” button without the need for registration.¹¹³

Fund-raising methods also include **self-supporting activities**. For instance, sources of the World Heritage Fund include funds raised by collections and receipts from events organised for the benefit of the fund.¹¹⁴ One management plan of CMS provides that managed ecotourism and other self-supporting schemes could be a possible way to generate funds.¹¹⁵

¹⁰⁹ ‘Who We Are’ (*Global Environment Facility*) <<https://www.thegef.org/who-we-are>> accessed 5 April 2022.

¹¹⁰ *Ibid.*

¹¹¹ ‘Welcome to The GEF Small Grants Programme’ <<https://sgp.undp.org/>> accessed 5 April 2022.

¹¹² ‘WIPO Voluntary Fund for Accredited Indigenous and Local Communities: Information Note on Contributions and Applications for Support’ <https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=563112> accessed 2 May 2022.

¹¹³ ‘IWGIA - IWGIA - International Work Group for Indigenous Affairs’ <<https://iwgia.org/en/>> accessed 5 April 2022. ‘Donate and Help Save Wildlife’ <<https://secure.wcs.org/donate/donate-and-help-save-wildlife>> accessed 5 April 2022.

¹¹⁴ Centre (n 82).

¹¹⁵ ‘Memorandum of Understanding on the Conservation and Management of Marine Turtles and Their Habitats of the Indian Ocean and South-East Asia’ (2002) 5 *Journal of International Wildlife Law & Policy* 193 <<http://www.tandfonline.com/doi/abs/10.1080/13880290209354008>> accessed 5 April 2022.

3.4.3 Recommendations to the CITES

This section illustrates the declining trend in improving IPLCs' participation in multilateral meetings and the increasing popularity of supporting projects to provide technical assistance and capacity building for IPLCs. However, the project-based fund is incompatible with the aim of the CITES. WIPO Voluntary Fund, which found difficulties in raising money for improving the direct participation of the IPLCs, now strongly encourages its members and all interested public or private entities to contribute to the Fund. This section further identifies that while most sources of international organisations or conventions come from the Member States, NGOs mainly encourage public and private entities to donate money. Accordingly, this report makes three recommendations:

Strongly encouraging Member States to make voluntary contributions, with a special focus on active States, e.g., Switzerland, Australia, Finland, Germany, and Norway.

Encouraging public and private entities, especially trust funds, to donate money.

4. Conclusion

In conclusion, we will summarise the recommendations made above for each pillar as well as the limits and shortcomings that might be precluding us from presenting a complete and full assessment of the issue at stake.

For the recognition of IPLCs, the new impact model could better ensure the effective participation of IPLCs at the international stage. However, the problem of state-dominant decision-making mechanisms and registration procedures could still impose significant hardship for IPLCs. For the future reform of the CITES, it might be necessary to consider an amendment to its Rules of Procedures and establish a separate observer category for IPLCs. It

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would also be recommended that the CITES consider having a more detailed guide for IPLCs if a new category is established.

Moreover, when considering the various engagement forms that have been assessed above, it has been recommended that the free, prior and informed consent of IPLCs should be sought for any given decisions that might impact them. Further, more autonomy should be granted to them in the field of management of endangered species, thus recognising the value of their knowledge and expertise. In addition, a revision process of the membership structure for becoming a party to the Convention should be commenced to find ways to include IPLCs in a manner that fosters an “effective and meaningful” participation of the latter. As for the shortcomings, it was noticed that very few States have answered in a detailed way CITES’ questionnaires regarding the mechanisms they implemented domestically to foster engagement with IPLCs, precluding this report from valuable insights. Further, the overall definitions of the forms of engagement remain blurry and abstract, making it difficult to assess fully their effectiveness. Finally, very few literature has been produced on this pressing issue, rendering the overall research project more challenging.

In matters of technical assistance and capacity building, States, organisations and conventions tend to use broad terms to classify the activities they are developing for the better inclusion and engagement of IPLCs. However, it is not clear in many of the documents what those terms and activities actually mean, and the practice is not easily found. Terms such as “develop workshops,” “prepare seminars,” “promote activities,” and many others, are some of the examples of broad use of words with little action behind them. One of the difficulties in producing the report on this third pillar can definitely be attributed to the lack of clear terms and enough practice that demonstrates the applicability of technical assistance and capacity building mechanisms. Furthermore, due to the majority of States and organisations not replying to our requests for interviews, the actual development of activities and their scope was quite limited. But practice can still be found and their success shows the benefits of investing in the proper training and education of IPLCs.

Funding is indispensable for improving the engagement of the IPLCs and providing technical assistance and building capacity. However, there is not enough evidence to ascertain the best format of the funding mechanism. Limited practices reveal that the money for enhancing the participation of IPLCs in international forums was largely reallocated to the projects which

build capacity for the IPLCs. To tackle this obstacle, current efforts focus on encouraging the involvement of the Member States, especially the leading contributors, such as Switzerland, Australia, Finland, Germany, and Norway. This report also stresses the importance of the public and private sectors.

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