

Response to the Questionnaire for Written Contributions to the Expert Workshop on the Review of the Mandate of the Expert Mechanism on the Rights of Indigenous Peoples.

Submitted by
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(NARF)
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1. What are the most valuable aspects of the current mandate of the Expert Mechanism on the Rights of Indigenous Peoples?

Resolution 6/36 of the Human Rights Council decided, to assist it in the implementation of its mandate, to establish a subsidiary body expert mechanism to provide the Council with thematic expertise on the rights of indigenous peoples. The assistance was in the form of applying thematic expertise to studies and research-based advice, and through the suggestion of proposals to the Council for its consideration and approval. In fulfillment of its mandate, the EMRIP has conducted important studies in education, indigenous languages and cultures, and especially relevant to the present discussion, a study of indigenous peoples' rights to participate in decision making. These reports and studies are important documents and constitute one of the most valuable aspects of the current mandate, but as discussed, *infra*, this does not go far enough. Another valuable aspect of the mandate is the face to face meeting with indigenous peoples' representatives and member states, but once again, this does not extend far enough.

2. How can the Expert Mechanism's role in assisting States to monitor, evaluate and improve the achievement of the ends of the Declaration be strengthened?

In order to enable the EMRIP to better ensure the implementation of the Declaration, the mandate must provide it with autonomy to act on its own initiative rather than simply providing "the Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council." The EMRIP should have the right and necessary support to obtain all

the information needed, from whatever source – state actors, indigenous peoples, and the public at large – to enable it to make reports and specific recommendations to States and UN agencies, in particular the relevant treaty bodies, concerning proper implementation of the Declaration. This could take the form of issuing interpretations of the Declaration as applied to specific contexts and suggestions as to needed actions, including possible domestic legislation. This would mean as to studies, that the EMRIP would decide for itself which, if any, studies would be most helpful in connection with its work of assisting States and UN bodies and agencies in the implementation of the Declaration. In order to gather and receive the relevant information, it may often be necessary to make country visits and the resources must be made available for this purpose. Within the UN itself, there is the need for broader acknowledgment of the rights of indigenous peoples to participate and recommendations in that regard can be very useful in assisting in the implementation of the Declaration.

3. Do you have suggestions to strengthen the Expert Mechanism’s collaboration with other bodies and mechanisms working on the rights of indigenous peoples?

The EMRIP should of course make every effort to collaborate with other bodies and mechanisms, not just within the UN, but other regional bodies and mechanisms and organizations as well, such as the Organization of American States. Within the UN, it should report to the General Assembly and other bodies as well as the HRC. To do this, as mentioned in the previous answer, it will need to be more autonomous and flexible than presently, and once again, be provided with adequate resources to fulfill an expanded mandate.

4. Do you envision a role for the Expert Mechanism in supporting States in the implementation of the Universal Periodic Review, treaty body and special procedures recommendations relating to the rights of indigenous peoples?

Under a new mandate, part of EMRIP’s role could be to inform and/or make recommendations for the implementation of recommendations of the treaty bodies, but it should not replace or duplicate their work.

5. How could a new mandate for the Expert Mechanism contribute to greater engagement between States and indigenous peoples to overcome obstacles to the implementation of indigenous peoples’ rights?

By definition, the expanded mandate allowing for country visits, gathering of information about situations in different States, the developing of specific recommendations for a given State, and the provision to States of specific guidance will demand increased engagement between States and indigenous peoples. An expanded mandate should include facilitating face to face dialogue between States and indigenous peoples, including possibly at a national level. This will be a very healthy development.

6. Do you have any comments or suggestions concerning the composition and working methods of the Expert Mechanism?

The present five member body will be inadequate under a revised and expanded mandate. Sufficient resources must be provided to substantially increase the number, perhaps to 9-12 members. Of course, the members must be independent experts with an established record of working in the area of indigenous rights, and should specifically include among the members those with legal expertise on indigenous matters, including indigenous traditional legal expertise. Indigenous peoples must have full and effective participation in the nomination and selection of the members. Regional and gender balance should be respected.

In addition to increased resources to expand the membership, more resources will be needed to expand the amount of time the members spend each year in fulfilling the mandate. Once per year for five days is woefully inadequate, even under the current mandate. Five to six times that period would greatly improve the effectiveness of the body, and even then would be insufficient for the work to be done.

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