

Questionnaire for written contributions to the Expert Workshop on the Review of the Mandate of the Expert Mechanism on the Rights of Indigenous Peoples

Replies by the Government of Finland  
11 March 2016

1. What are the most valuable aspects of the current mandate of the Expert Mechanism on the Rights of Indigenous Peoples?

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has undertaken questionnaires to seek the views of Member States on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. The summary of responses to the questionnaire provides valuable information both on the achievements and good practices and the challenges in adopting measures and implementing strategies to attain the goals of the Declaration.

Thematic studies conducted by EMRIP have clarified the scope and content of the Declaration. Finland has appreciated EMRIP's efforts to provide continuing follow-up to its thematic studies. However, it has been difficult to assess the actual impact of these studies at country level.

EMRIP has given voice to Indigenous Peoples. Their views are reflected in the thematic studies as well as heard in the meetings.

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?

First, EMRIP should be provided with a defined and specific mandate to assist States to monitor, evaluate and improve the achievement of the ends of the Declaration. This should be done by amending the HRC resolution 6/36. The mandate should be streamlined. For example, the current mandate includes thematic expertise focusing on studies. Also the Special Rapporteur on the Rights of Indigenous Peoples conducts or contributes to thematic studies on topics of special importance regarding the promotion and protection of the rights of Indigenous Peoples. Efforts should be made to avoid unnecessary duplication of mandates while ensuring a healthy complementarity between them.

EMRIP's new mandate could include the possibility to review the promotion and practical realization of the Declaration and to examine possible solutions to emerging challenges and problems involving Indigenous Peoples, their status and rights. In order to provide assistance, EMRIP could be authorized to recommend further measures, as appropriate, for the promotion and protection of the rights of Indigenous Peoples.

In the Finnish structure, the Declaration is not a legally binding but a solemn policy document which draws on principles and norms contained in other international human rights instruments. Therefore EMRIP's new mandate should not be compared to a treaty monitoring body. States should not be placed under an obligation to report on the implementation of the Declaration but provided with an opportunity to share information and good practices on a voluntary basis.

The UN Human Rights bodies, both treaty-based and Charter-based bodies, hold a vast amount of information about the actual situation of the Indigenous Peoples and on the realization of their rights. EMRIP's monitoring function could be built on the available information, observations and recommendations from different sources, such as the Human Rights Council and its Special Procedures as well as the Universal Periodic Review, the Treaty Monitoring Bodies, the Permanent Forum on Indigenous Peoples, etc. The mandate could include the possibility for EMRIP to gather information from different sources, including from States, Indigenous Peoples, National Human Rights Institutions, non-governmental organisations, the UN programmes, funds and specialized agencies, regional inter-governmental organisations, international financial institutions, such as the World Bank and regional multilateral development banks, and other stakeholders.

Based on this information EMRIP could consider issuing an annual report in order to provide a global overview, "a big picture", of the state of Indigenous Peoples in the world. It could identify good practices regarding appropriate measures and implementation strategies to attain the goals of the Declaration as well as identify protection gaps and illustrate challenges in adopting measures and implementing strategies to attain the goals.

Based on its findings and conclusions, EMRIP could facilitate constructive dialogue between Member States and Indigenous Peoples on domestic level on a voluntary and request basis. EMRIP could support States to find the most suitable measures for each national situation to reach the Declaration objectives. The Declaration is a progressive and comprehensive instrument, but it also provides flexibility by recognizing the need to take into consideration the significance of national and regional particularities and various historical and cultural backgrounds.

EMRIP could identify the need for technical assistance and encourage Member States to call for such assistance aimed at improving the realization of the rights of Indigenous Peoples. EMRIP could offer good offices in this regard by bringing Member States, Indigenous Peoples and the UN together.

In addition, EMRIP could be authorized to issue "general policy recommendations" which clarify the scope and content of the Declaration.

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

Collaboration could be strengthened through the aforementioned EMRIP's annual report. If EMRIP's annual reports were drawn on the findings, conclusions and recommendations of the mechanisms mentioned above, this would provide a comprehensive and solid reference document for the work of these mechanisms, too. EMRIP's special expertise could be reflected in the conclusions and recommendations of the annual report and deepen the understanding of the rights of Indigenous Peoples also in other mechanisms using the report.

Collaboration could be strengthened through the enhanced and timely exchange of information. A referral system from EMRIP to Special Rapporteur and *vice versa* could help to enhance collaboration.

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

Based on its findings and conclusions in the annual report, EMRIP could facilitate constructive dialogue between Member States and Indigenous Peoples on domestic level on a voluntary and request basis. EMRIP could support States to find the most suitable measures for each national situation to reach the Declaration objectives by using its report as tool.

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?

Please see reply to question number two.

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

The quality of experts is more important than their number.

All experts are to be independent, functioning in their personal capacity, and have recognized competence in the field of human rights, in particular, excellent knowledge of the rights of Indigenous Peoples. Membership should take into account geographical representation and gender balance and represent a broad mix of expertise, including knowledge of different legal and justice systems, including indigenous traditional justice systems.

Working methods should fall within the competence of the Expert Mechanism.

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