

## **INDIGENOUS WORLD ASSOCIATION**

Submission to the Expert Workshop on the Review of the Mandate of the  
Expert Mechanism on the Rights of Indigenous Peoples  
March 14, 2016

### 1. What are the most valuable aspects of the current mandate of the EMRIP?

Under HRC Resolution 6/36, the EMRIP is to provide thematic expertise that will focus mainly on “studies and research-based advice.” This mandate provides for in-depth research on topics that are of great importance to indigenous peoples. At its best, the EMRIP can provide meaningful, research-based advice that other human rights bodies can use.

The most useful tool employed by the EMRIP is the Expert Advices, which provide clear recommendations that propose concrete undertakings and actions for States to follow. In the past, the EMRIP has linked the Advices to specific provisions of the UNDRIP and other International legal standards. Additionally, the EMRIP’s Advisory Notes have expanded upon previous Advices and further elucidated corrective measures, etc. For example, Advice 2 (Right of IP’s to Participate in Decision Making) was later expanded by Advice 4 (Addressing Consultation and Free Prior and Informed Consent (FPIC)). The Advices can and should be augmented by specific recommendations to State and Indigenous parties that provide corrective and or special measures to address human rights violations and conflicts.

Additionally, EMRIP has used even its limited resources to take Expert Seminars outside of Geneva and New York to different regions of the world, thereby making the body accessible to those who cannot otherwise attend sessions in Geneva. This is a valuable aspect for which the EMRIP should receive additional resources.

### 2. How can the role of the EMRIP to assist States to monitor, evaluate & improve the Achievements of the ends of the Declaration be strengthened?

The value of the EMRIP studies and expert advice can increase greatly with added resources to support the Expert Seminars. At this point in time the EMRIP can only schedule the expert seminars with a host institution since it does not have a budget to cover the entire costs. With the necessary resources, the EMRIP, which takes its seminars to other regions of the world, can perform valuable and useful research to assist states to monitor, evaluate and improve the implementation of the UNDRIP.

Additionally, the role of the EMRIP can be strengthened by the caliber of EMRIP members themselves. We note with great concern the need to ensure that members of the EMRIP are, in fact Experts. Unfortunately for indigenous peoples and the EMRIP, persons who are not experts in international human rights and who are not qualified to conduct necessary research and/or interpret the UNDRIP or other human rights standards as minimum standards for the protection of Indigenous Peoples, have been appointed in the past. Criteria should be

established to ensure that the Experts appointed are indeed qualified experts, with the necessary credentials and experience, etc..

5. How could a new mandate for the EMRIP contribute to greater engagement between states and Indigenous Peoples to overcome obstacles to the implementation of IP's rights?

We believe questions 2 and 5 are closely related, so place them side by side. Indigenous Peoples from all regions of the world have shared a concern that the EMRIP is not functioning as an independent Expert Body, and therefore support amendments to the EMRIP mandate that would help to more fully realize this potential. Currently, the Human Rights Council (HRC) exercises influence and control over the EMRIP by identifying thematic areas for the EMRIP to study, rather than the EMRIP identifying its own priority areas of focus, under the broader framework of the HRC. We believe that the EMRIP should be more independent in determining its areas of focus. Having more independence in this regard could facilitate the EMRIP's ability to better interface with other Expert Bodies in the UN System, including the Permanent Forum (PFII) and Special Rapporteur (SR). The priorities determined by the HRC may not always reflect the needs and concerns of Indigenous Peoples, or what the Permanent Forum and States need from the EMRIP.

This is closely related to amending the EMRIP's mandate in order to include clear authority to work with States and IP's towards the ends of implementation of the UNDRIP. This task (monitoring State implementation of the UNDRIP and resolution of conflicts preventing implementation of the UNDRIP) requires that the EMRIP be able to review specific cases involving States and IP's and that the EMRIP fully appraise itself of all aspects of the situation, including relevant documents, studies, reports from UN and other civil society NGO's, as well as receive current updated information from IP's and States. This can be achieved with an expanded mandate that sets forth a clear grant of authority, including internal procedures, that facilitate the review of State and IP human rights issues raised within the context of human rights. Below is suggested language:

- A. The Expert Mechanism shall review and assess progress made by States in implementing the provisions of the UNDRIP through processes and procedures that include Consultation with IP's in order to ensure their Free, Prior and Informed Consent on matters impacting their human rights.
- B. The EMRIP shall issue advisory opinions and recommendations for overcoming obstacles to the implementation of IP's rights subject to the standards set forth in the UNDRIP.

With regard to possible procedures for the latter suggested mandate, the EMRIP could establish an agenda item that reviews State and IP situations by region, on each of its annual Agendas. For example, in Year 1, the EMRIP will consider Implementation of the UNDRIP in Asia & the Pacific, in Year 2 the EMRIP will consider issues relating to North America, etc.. In preparation, the EMRIP Experts will review all studies (including Special Rapporteurs, Agencies,

State Agencies and indigenous interventions & submittals to Human Rights and UN bodies relating to the situation.

- C. The EMRIP shall set aside sufficient time on its annual agenda to ensure that IP's and States from the Region(s) reviewed have adequate time to present and file interventions on County specific situations.

A second way the EMRIP could address this new mandate is to take a thematic approach as well as a Regional Approach. For example, in one year the EMRIP will focus on situations involving extractive industries in Indigenous Territories or utilizing or impacting indigenous resources in Asia & the Pacific. This type of approach would facilitate EMRIP's ability to understand common problems relating to State undertakings in a specific thematic area and to fashion recommendations to address common or similar human rights violations with recommendations and advisory opinions that have global applications. It may also facilitate the application of more standardized procedures for critical processes like "Consultation" with IPs that result in Free Prior and Informed Consent.

3. Suggestions to strengthen the EMRIP's collaboration with other bodies and mechanisms working on the rights of IP's. Reporting and work done by any and all of the UN SR's that are relevant to the EMRIP review in progress should be included. The Special Rapporteur should be required to attend and present on country specific situations previously reviewed by the current SR on Indigenous Issues. If a country specific report was done by a prior SR (regardless of their area of focus) the Secretariat should prepare briefing notes on the report and EMRIP experts should be provided with specific Recommendations made by the SR. This practice could be especially useful in those instances where States and Indigenous Peoples have divergent viewpoints, such as the rights of the child. In some cases there may be two or more SR's briefing the EMRIP.

4. Potential EMRIP role in supporting States in the UPR, Treaty Body and special procedures recommendations re: Indigenous Peoples' human rights.

EMRIP has potential to play a key role in supporting recommendations from these procedures. As a body that oversees all indigenous peoples' rights, EMRIP can ensure that implementation measures are not pigeon-holed but integrate all relevant bodies and standards. (See answers to question 2 & 5 as well.) EMRIP should include all relevant UN, State & IP Reports & data relating to the situation in its review. The EMRIP should have a standard procedure for interfacing with the UPR including forwarding all EMRIP Reports, Advice and Recommendations to UPR, when the UPR is reviewing a State's record for compliance with Human Rights Treaties. The EMRIP should make submissions to other UN bodies & Specialized Agencies as well as the UPR on any and all matters it has addressed that may impact the UPR or work of the UN body. In keeping with its new mandate, the EMRIP reports, Advice and Recommendations should be forwarded to relevant State bodies including State civil rights commissions.

#### 6. Comments regarding composition and working methods of the EMRIP.

The EMRIP needs to be expanded to at least 7 members, 1 for every region of the world. Additionally, creating a seat for the person who previously served as the Special Rapporteur on Indigenous Peoples would add considerable expertise to the EMRIP. This will ensure that there is at least 1 expert from each Region where IP's are working with States to implement the Declaration and that IP's in each global region will have a designated Expert on the EMRIP to interface with. The inclusion of the previous SR on Indigenous Peoples is needed to ensure that recommendations or Advice are consistent with developing international human rights law on IP's. The need to establish clear qualifications for 'Experts' of the EMRIP is important if there is to be consistency and accuracy in the interpretation and implementation of human rights standards and protections. The EMRIP should have an established process for its own annual review of the implementation of the Declaration. (Questions 2 and 5)) and for interfacing with other UN Bodies including the UPR (Question 4).