

**Speaking Notes**  
**Expert Workshop on the review of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples**

**4-5 April 2016 – Palais des Nations, Geneva**

- Good afternoon to all delegations. I want to thank all representations of Indigenous peoples, States and United Nations agencies and bodies for participating in this important workshop to review the mandate of the Expert Mechanism, by being here in person or by providing responses to the questionnaires aimed at hearing from Indigenous peoples and States on the review of the mandate of the Expert Mechanism.
- It is an important opportunity to look back at what we have accomplished as an entity, which was established to inform the important work of the Human Rights Council in advancing the rights of Indigenous peoples. This workshop has given us an opportunity to take stock at how far we have come since the establishment of the Expert Mechanism and our vision for how we can improve the work completed through the Expert Mechanism.
- In my comments, I will highlight the main thematic areas of recommendations put forth, with my thoughts about how these recommendations might be advanced to improve the mandate of the Expert Mechanism.

**First Thematic Area: Identifying and Determining the Work of the Expert Mechanism, particularly in relation to its Thematic Studies and Advice**

- There were many comments from Indigenous peoples and States supporting the continued role of the Expert Mechanism in issuing Thematic Studies and Advice on the human rights of Indigenous peoples. As has been discussed over the course of this workshop, currently, the Expert Mechanism provides a proposal or several proposals to the Human Rights Council regarding the focus of that particular year's proposed thematic study and other areas of work to be undertaken. The Expert Mechanism issues this in July, and in September, the Human Rights Council renders a decision about which thematic area will be studied. From here, work begins and an Expert Seminar is typically held in February to inform the Study. This can be distinguished from the method of work of the Permanent Forum on Indigenous Issues, which renders its decisions about the focal area of work for each year's Expert Group Meeting at its annual session. It does not require the approval of the Economic and Social Council (ECOSOC). The Special Rapporteur also selects his or her thematic areas of study independently from the Human Rights Council.

- In the responses from the questionnaires, Indigenous peoples and states have identified concerns with this method of work. For example, the Arctic Indigenous Peoples Organizations raised the concern that the themes of the thematic studies are decided by the Human Rights Council and not by the Expert Mechanism itself, (para. 11) a concern echoed by the Indian Law Resource Centre. (para. 11) The Centre for World Indigenous Studies also pointed out that the Expert Mechanism did not have the ability to undertake independent studies based on requests from States and Indigenous people. (para. 12) This is consistent with the recommendations of the Report of the Open-Ended Meeting of Indigenous Peoples on the Follow-up to the World Conference on Indigenous Peoples. (para. 25) Denmark and Greenland have also suggested that the Expert Mechanism's mandate be more independent and not determined by the Human Rights Council. (para. 14)
- I recommend that the Human Rights Council remove this requirement that it approves the Expert Mechanism's areas of work, including thematic studies. On principle, such a change to the method of work would increase the independence of the Expert Mechanism, which is considered a hallmark characteristic of effective human rights mechanism. Furthermore, this change would allow the Expert Mechanism to begin its work immediately following the Expert Mechanism's annual sessions, rather than awaiting a decision to be made two months later by the Human Rights Council. This would also allow the Expert Mechanism to be more responsive to the recommendations made at its annual session by Indigenous peoples and States who engage in the dialogues and identify further areas of work, rather than this being determined after the session in a different forum.

**Second Thematic Area: Increased role in monitoring the implementation of the UN *Declaration on the Rights of Indigenous Peoples***

- Many States and Indigenous peoples identified that the Expert Mechanism plays an important role in promoting the rights of Indigenous peoples, including those contained in the UN *Declaration*. For example, Finland noted that the Expert Mechanism's thematic studies have helped clarify the scope and content of the Declaration and the Democratic Republic of Congo made specific mention of the usefulness of the thematic studies on language and culture, on indigenous peoples' access to decision-making and extractive industries as well as the summary report of responses to the questionnaire on implementation of the UN *Declaration*, in this regard. (para. 8)

- The Russian Federation underlined EMRIP's role as the most competent subsidiary body of the Human Rights Council on the promotion and protection of indigenous peoples' rights. (para. 8) Further, the National Human Rights Commission of New Zealand found the thematic studies and reports on the questionnaire to be useful as sources of information and advocacy tools. (para. 12) The National Congress of American Indians and the Native American Rights Fund found valuable the studies on education, Indigenous languages and culture, and the right to participate in decision-making. (para. 10)
- There were numerous calls for the Expert Mechanism to play an increased role in monitoring the implementation of UN *Declaration*. This included the suggestion that the Expert Mechanism develop voluntary guidelines for the implementation of the UN *Declaration* by Chile and Guatemala (para. 15) Australia suggested that the Expert Mechanism undertake independent multi-national reviews that improve data collection, research and knowledge sharing at a global, rather than national level. (para. 19) The Arctic Indigenous Peoples organizations called for the Expert Mechanism to have the authority to identify priorities areas and to interpret the UN *Declaration* and engage with States and Indigenous peoples on a voluntary basis. (para. 21) Congres Mondial Amazigh made the interesting suggestion that the Expert Mechanism become a monitoring body for the implementation of the UN *Declaration* similar to the work of Treaty Bodies. (para. 24) This may, however, create duplication.
- Finally, in the report of the open-ended meeting of indigenous peoples on the follow-up to the WCIP, Indigenous representatives called for the Expert Mechanism to issue general observations and interpretations of the provisions of the Declaration, and collaborate and take joint action with other mandate holders. (para. 22)

### **Third Thematic Area: Monitoring and Evaluating Progress on Implementing the UN *Declaration* and Human Rights**

- While numerous suggestions were made for the Expert Mechanism to focus on national matters of concern related to implementation of the UN *Declaration*, this is viewed as the central role of the Special Rapporteur. The United States made an interesting suggestion, to modify the Expert Mechanism and the Special Rapporteur on the rights of Indigenous Peoples to become one entity charged with promoting respect for the Declaration with the Special Rapporteur as the head of the Expert Mechanism. (Para. 15) This could be an effective way to coordinate the mandates of the two Indigenous-specific mandates that report to the Human Rights Council and expand their respective capacities to monitor the implementation of the UN *Declaration*. It may provide an opportunity to highlight national concerns at annual session of the Expert Mechanism and could enhance the Expert Mechanism to provide country-specific technical assistance to States and Indigenous peoples (para. 16).

- The recommendation by Norway that the Expert Mechanism could assist States in monitoring and evaluating progress on recommendations by human rights mechanisms by issuing common concerns and areas of improvement is an interesting one. (para. 16) This could be combined with the recommendation by Chile, Colombia and Finland for the Expert Mechanism to support "...the design, development and implementation of sectoral plans to address challenges facing Indigenous peoples as well as strengthening of training and education on indigenous peoples' rights." (para. 17) This could also be achieved through Chile and Australia's suggestion that in addition to the Expert Mechanism's Studies and Advice, it could "undertake independent multi-national reviews that do not focus on a specific Member State and at the same time improve its data collection, research and knowledge sharing." (para. 19) This role could continue to include an analysis of the progress of implementation of the UN *Declaration*.
- Such an expanded role is consistent with recommendations by Indigenous people's calls for "...a strengthening of EMRIP's authority to work with States and indigenous peoples towards the implementation of the Declaration, including being able to review and assess progress made by States in implementing the provisions of the Declaration through processes and procedures that include consultations with indigenous peoples and issue advisory opinions and recommendations (Indigenous World Association) and issuing general comments on the interpretation of the Declaration." (Citizen Potawatomi Nation and Indian Law Resource Center). (para. 21)
- However, this would need to be structured in a way that is not duplicative of the treaty-monitoring bodies' issuance of General Comments. Perhaps, this would be best achieved by the Expert Mechanism taking a lead role in monitoring the implementation of the UN *Declaration* as reported by States through the Universal Periodic Review. (para. 18)
- Such an increase in mandate could provide the Expert Members of the Expert Mechanism the opportunity throughout the year to support the work of the Special Rapporteur, Treaty-Monitoring Bodies and the Universal Periodic Review process in a complimentary manner.

#### **Fourth Thematic Area: An increased role in facilitating dialogue among Indigenous peoples, States and other UN agencies and bodies**

- A common theme of the recommendations put forth is the idea of an expanded role in facilitating dialogues among Indigenous peoples, States and other UN agencies and bodies. This includes hearing from Special Rapporteurs of various mandates at the Expert Mechanism's annual session (para. 31) and that the Expert Mechanism provide input into the Working Group on Human Rights, Transnational Corporations and other Business Entities (para. 31) and by providing technical assistance to States, Indigenous peoples and the private sector (para. 34). As Members of the Expert Mechanism, we have suggested that annual meetings be held with all members of the three Indigenous-specific mechanisms (para. 33) and that the Expert Mechanism provide thematic advice to organs and specialized agencies of the UN, including participation in the meetings of the UN Inter-Agency Support Group on Indigenous Peoples. (para. 33)
- Further, the "Indigenous World Association suggested that EMRIP could establish a standard procedure interfacing with the UPR by forwarding all relevant recommendations from EMRIP to the UPR system as well as making submissions to other UN bodies and specialized agencies." This is supported by the report of the open-ended meeting of indigenous peoples on the follow-up to the WCIP, where Indigenous representatives "...suggested that EMRIP should contribute to the work of the UPR process and the Treaty Bodies and provide advice for the implementation of recommendations of UN human rights bodies where there is a substantial consensus between States and indigenous peoples." (para. 36)

#### **Fifth Thematic Area: Composition of the Mechanism**

- In terms of the composition of the Expert Mechanism, perhaps the most appropriate way to effectively address the mandate to advance the rights of Indigenous peoples is to ensure representation from all 7 geo-political regions of the world. This is proposed by the Indigenous World Association. (para. 49) Consideration could also be given to the suggestion of the 3 Chairpersons of Treaty Bodies and the Special Rapporteur. An alternative proposal could be to appoint one representative from each of the 7 geo-political regions of the world, as well as 3 Chairpersons of the Treaty Bodies and the Special Rapporteur. Gender balance is important to achieve in any composition.

- States (including Norway and Finland) and Indigenous peoples have identified the need for Experts to have a deep knowledge of international human rights and Indigenous peoples, including in indigenous legal systems. (para. 46) The Arctic Indigenous Peoples organizations and the Indigenous World Association called for a strengthening of expertise to ensure higher levels of qualification of Experts. (para. 47) The Centre for World Indigenous Studies highlighted the need for interdisciplinary backgrounds (para. 47).

**Sixth Thematic Area: Increased resources for the Secretariat and for the participation of the Expert Mechanism at meetings.**

- It is imperative that the OHCHR ensure that the budget of the Expert Mechanism reflects any increased role identified to be played by the Expert Mechanism in order for changes to the mandate of the Expert Mechanism to be effectively implemented.
- Hai Hai. (Thank you.)