

Seminar on EMRIP's mandate

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Thank you Mr Chairperson,

(The Expert Mechanism was established under resolution 6/36 to act as a subsidiary body to provide the HR Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council.)

As the third speaker, I would like to pick on specific benefits and limitations of the Expert Mechanism.

Over the past years, EMRIP has fulfilled its mandate as set out in resolution 6/36 and has been indeed providing the Council with thematic expertise on several issues. In trying to improve this body, we should not under-estimate the positive effects that EMRIP's studies have had to the HRCouncil and beyond. We should also not undermine the *differences* in the impact that EMRIP is expected to have from the impact that the UNSR or the PFII are expected to have.

EMRIP studies offer the opportunity to report how indigenous peoples understand the various concepts related to their rights, recognised in UNDRIP, what they see as positive progress and what they see as areas in need for further work. EMRIP studies offer the

opportunity to record the evolution of human rights standards as pushed forward by other bodies and reflect how this evolution positively affects indigenous rights. The studies are important to record how the provisions of the Declaration are supported by other current instruments of international law, other current discussions in the international arena and by state practice. This strengthens the interpretation and ultimately the correct implementation of the Declaration. For example, the most recent study on indigenous cultural heritage revisited some of the discussions on cultural heritage and discussed how indigenous understandings on the notion of heritage, the need to protect intangible heritage, and the concept of natural heritage is now shared by other bodies, which puts more pressure on the recognition of such rights in the UNDRIP. Ultimately, the studies offer the opportunity to give specific ideas and examples to States regarding how to interpret and implement the Declaration at the national level.

A current weakness raised by many that is the lack of a direct reference in the EMRIP's mandate to the interpretation and implementation of the Declaration.

There is no specific UN body that is actually mandated to interpret and supervise the implementation of the UNDRIP by states. Of course the UNSR and the PFII have clearly made the UNDRIP as the basis of their work. Also the UN treaty bodies have used the Declaration to

discuss indigenous rights and through their work, they do interpret the Declaration. Special Rapporteurs, such as the SR on the right to food and in the field of cultural rights have also interpreted the content of indigenous rights. However, the UNRIP has the opportunity to be the body that will focus on the interpretation and will facilitate the implementation of specific themes of the Declaration.

However, the broadening of the mandate of EMRIP cannot be effective unless it is followed by first, the political will by the states to engage with the work of the EMRIP; second, resources allocated to EMRIP that allow for a serious and credible work; and third, assurances that the skills of the EMRIP as a collective mechanism are such that its mandate is realised. It has been repeatedly noted that no change of the mandate will make a difference, if the requirements above are not fulfilled.

Indeed, one of the main limitations of EMRIP has been the minimal engagement of states in the consultation process for the studies, their dissemination at the local level and equally importantly, the follow up of the studies with concrete measures. I note that each study had around 10-12 states providing information and best practices. For today's meeting only 11 states have responded to the questionnaire, none from Asia and only one from Africa.

More engagement by other **UN bodies** will also improve the effectiveness of EMRIP's mandate. It will help the comprehensive nature of the studies but also will educate the other UN bodies on the indigenous rights aspects of their work. Ultimately, it will contribute to making EMRIP as the central hub for the implementation of indigenous rights.

A second limitation has been that the decision of the theme for each year comes from the Council. Yet, it is the EMRIP that has the experts on indigenous human rights issues, the ones who know which areas need more clarification or support or dissemination. However, EMRIP on occasions has not been heard loud and clear on the priorities of the themes to be chosen. So moving the decision on the theme of the studies from the HRCouncil to the EMRIP experts would help the effectiveness of the body.

One of the successes of EMRIP have been the Advices that are included at the end of the studies. They contain concrete conclusions as to the content of international law, and specific points that if followed would have tangible specific effects. Focusing on these Advices could be a way to strengthen EMRIP's contribution to the implementation of the Declaration. For example, the follow up to these advices can be improved:

An idea would be a regional forum every couple of years where States, indigenous organisations and experts would discuss the positive and challenging aspects of implementing the Declaration on the themes analysed in EMRIP's previous studies. This initiative would strengthen the impact of the studies and will encourage the engagement of states in EMRIP's work. The Forum on Business and HR can act as a guide. According to resolution A/HRC/RES/17/4, the 'a Forum on Business and Human Rights' meets annually under the guidance of the Working Group to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices;

Another way of pushing forward the implementation of UNDRIP may possibly be through a more formal link between EMRIP and the UPR. The EMRIP could provide information to the UPR on indigenous issues and could also follow up the UPR recommendations. One would say that there are other causes that may wish to be included more formally in the UPR, but the unique position of the EMRIP as an advisory body to the HRCouncil distinguishes it from the other Specialised procedures.

Indeed, this is another success of the EMRIP as it stands now, its unique position, and it would be a loss if it was not maintained in the new mandate.

Finally, although the broadening of the EMRIP's mandate has been positively viewed by most, one would not want the new mandate to be included in a resolution in too specific terms. The openness and flexibility that EMRIP enjoys is very important too. One would not want a mandate that is so prescriptive that limits in the long run the functions of EMRIP.

Thank you very much.