

# **Expert Workshop on the reivew of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples**

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**Presentation by Professor Mattias Åhrén on the topic «Exploring new areas of work»**

When exploring new, and hopefully improved, areas of work of the Expert Mechanism on the Rights of Indigenous Peoples, one must, as mentioned, of course in the outset be mindful of the mandate given to the Human Rights Council by the UN General Assembly in Resolution 69/2 (i.e. in the Outcome Document of the so called World Conference on the Rights of Indigenous Peoples) para. 28. Participants at this Expert Workshop may recall that this provision provides that the Expert Mechanisms' mandate shall be amended in a manner that allows it to [quote]

«. . . more effectively promote respect for the UN Declaration on the Rights of Indigenous Peoples, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration.» [unqoute]

This is a crytal clear mandate, including for this Expert Workshop. What it authorizes us to do is to explore new areas of work for the Expert Mechanism on the Rights of Indienous Peoples, areas of work that are supposed to serve to further the implementaton of the Declaration on the Rights of Indigenous Peoples - and nothing else. The question is thus not whether the mandate of the Expert Mechanism should be amended to meet this end, but how. It is thus – by instruction by the UNGA - the how that we need to focus on here. One might add that this is not only a very clear but also a highly important mandate. As all those that participated in the elaborations on the Outcome Document of the World Conference

will recall, the recommendation that finally ended up in OP 28 was one of the most prioritized in that process.

As to the how, in what manners the Expert Mechanism's mandate should be amended in order to promote the implementation of the Declaration, the answers to the questionnaire contain some interesting and useful proposals, suggestions which have also been emphasized and underscored at this Expert Workshop so far. In particular, two general positions can be discerned and deduced from the answers submitted, where one would seemingly follow naturally from the other.

Many have emphasized that in order for the Expert Mechanism to have the capacity to effectively promote the implementation of the Declaration on the Rights of Indigenous Peoples, the Mechanism should engage with states and indigenous peoples at the national level – on a voluntary basis. The various proposals of course differ in the details, but the general idea seems to be the same. This is thus the first common major position that has been put forward.

As to the second, in engaging at the country level in order to promote the implementation of the Declaration, the members of the Expert Mechanism necessarily will have to take a position on the more precise meaning of the various provisions of the Declaration. The members must in other words interpret the instrument. Reasonably, these interpretations must carry some level of authority. If the Expert Mechanism on the Rights of Indigenous Peoples is entrusted with furthering the ends of the Declaration on the Rights of Indigenous Peoples – as UNGA Resolution 69/2 calls for – then its understanding of the content and scope of the Declaration provisions must necessarily carry certain weight.

Against this backdrop, it certainly makes sense – as proposed in many of the written submissions and as further highlighted by many delegations at this workshop so far – that the Expert Mechanism summarizes, systemizes, and generalizes its conclusions in general reports, which can be annual as suggested by some, and which could be called 'general policy recommendations', 'joint and coordinated interpretations or comments', 'observations', or carry other labels as suggested by various delegations.

Although it is perhaps predominantly a topic of this afternoon, I think it is inevitable to at in this context briefly touch upon the qualifications of the Expert Mechanism members following the revision of the mandate, as this issue is closely related to the work the Mechanism is supposed to carry out. So please bear with me for a minute.

Surely, if the Expert Mechanism's interpretations of the Declaration on the Rights of Indigenous Peoples – including as expressed in general, perhaps annual, observations – should be regarded to carry certain level of authority, it is imperative that the interpretations are in conformity with established international legal standards and thus persuasive to both indigenous peoples and states. This in turn requires that the members of the Mechanism are selected among candidates with proven knowledge of international law in general, and of indigenous peoples' rights in particular.

In my view – following the revision of its mandate - the Expert Mechanism should discontinue or at least down-prioritize its practice to produce thematic studies. As already mentioned by some, these have – but not necessarily as a result of their quality - proven to be of limited value and use. During the course of this meeting, many have pointed to the importance of adequately resourcing the Expert Mechanism, and I certainly align myself with these voices. Notwithstanding, at the same time I think that one has to be realistic. Even if the revision of its mandate results in a better resourced Expert Mechanism than is presently the case, the Mechanism will surely necessarily always have to prioritize when it comes to what tasks to carry out. Under such circumstances, in my view, it is wiser for the Expert Mechanism to channel its resources to its general observations on the interpretation of various aspects of the Declaration on the Rights of Indigenous Peoples, compared with continue to carry out the present style thematic studies.

Thank you Mr. Moderator.