

**Canada Response to Questionnaire: Review of the Mandate of the Expert Mechanism  
on the Rights of Indigenous Peoples (EMRIP)** (March 29, 2016)

Canada Responses: Questionnaire To States, Indigenous Peoples and Other Stakeholders

1. What are the most valuable aspects of the current mandate of the Expert Mechanism on the Rights of Indigenous Peoples?
  - With respect to the review of the Expert Mechanism's mandate, Canada believes it is important to maintain the key elements of the current mandate that focus on value-added research and advice that the Expert Mechanism can provide.
  - In our view, it is essential that EMRIP's annual sessions continue to serve as a space for dialogue between Member States and Indigenous Peoples.
  - Keeping in mind that monitoring, country visits and reporting are integral parts of the Special Rapporteur's mandate, the Expert Mechanism might also, at the request of a Member State, and within existing resources, review and provide advice on possible improvements to domestic legislation and policy in relation to the rights of Indigenous Peoples.
  - Canada looks forward to learning what is envisaged, specifically by the Expert Mechanism and other Member States relative to Paragraph 28 of the Outcome Document and can be expected to participate actively in ensuing discussions among all stakeholders on the potential benefits and challenges, including system-wide implications, associated with the EMRIP review.
  - EMRIP's current mandate complements Canada's scope of work in efforts to meet its international treaty obligations within Canada's domestic legal and policy framework.
  - EMRIP's focus on both individual and collective rights issues is beneficial.
  - The EMRIP mandate of providing independent thematic studies, research and expert advice presents valuable opportunities for the exchange of diverse views and the collation of experiences across jurisdictions amongst academics, practitioners and other experts on these important overarching Indigenous rights issues.
  
2. How can the Expert Mechanism's role be strengthened in assisting States to monitor, evaluate and improve the achievement of the ends of the Declaration?
  - Canada believes that the following roles could be included in the revision of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples:
    - i. collecting and disseminating information about good practices related to the United Nations Declaration on the Rights of Indigenous Peoples,
    - ii. collaborating and taking joint action with other human rights mechanisms;
    - iii. ensuring that the Expert Mechanism on the Rights of Indigenous Peoples studies and advice become tools for States, Indigenous Peoples and the United Nations

system to work towards the ends of the United Nations Declaration on the Rights of Indigenous Peoples;

- iv. a greater focus on studies that highlight best practices by Member States in achieving the ends of the UN Declaration, including innovative development and delivery of policies and programs would also be useful.
- v. supporting States in the preparation of national strategies aiming to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples;
- vi. providing support and advice to improve domestic legislation and policy with regards to the rights of Indigenous Peoples; and,
- vii. engaging more actively with the Universal Periodic Review, the Special Procedures and the Human Rights Treaty Bodies.

- EMRIP recommendations in relation to collecting and disseminating information on good practices and providing follow-up to previous studies are useful.
- In any proposal to expand EMRIP's role that includes assisting States to achieve the goals of the UNDRIP, and not merely reporting on best practices, it is essential not to create inefficiencies by duplicating existing UN mechanisms in areas where the EMRIP has limited expertise.
- Many of the suggested changes to date for a new EMRIP mandate would also require additional financial resources. The availability of resources will need to be factored into an eventual decision to support these reforms. Resource implications have yet to be scoped out and require further discussion and examination.

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?

- EMRIP could play a valuable role in linking into efforts to implement the Sustainable Development Goals (2030 Agenda); provide expertise on Indigenous issues; and, ensure that Indigenous issues are incorporated into relevant SDG outcomes.
- EMRIP can provide technical expertise regarding the implementation of other international human rights treaties (i.e., ICCPR, ICESCR, ICERD etc.).
- Over time, EMRIP's enhanced role and engagement could expand the policy dialogue on Indigenous issues to broader audiences such as Indigenous Representative Organizations, civil society, universities and policy research organizations, etc.
- EMRIP could engage in consultations with global stakeholders to consider policy coherence with other key multilateral instruments/negotiations which affect Indigenous Peoples (e.g., World Bank Safeguards, FAO Guiding Principles on Sustainable Agriculture).
- EMRIP could enhance its engagement with leading actors from the Private Sector, academics and civil society with respect to the Declaration. EMRIP could review policy statements and global practices by leaders in the private sector (e.g., in Canada - Borealis, FSC, MAC). Literature review could be expanded to the role of academia (In

Canada - the University of Manitoba published a Handbook on the Declaration).

4. Do you envision a role for the Expert Mechanism in supporting States in the implementation of the Universal Periodic Review, treaty body and special procedures recommendations relating to the rights of Indigenous Peoples?
  - In principle, yes (see Response in Question #2 above).
  - It will be important to review the details of such a proposal before commenting in further detail.
  
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?
  - The Declaration is a high-level document containing important high-level objectives. UNDRIP implementation requires ongoing expertise and engagement. A new strengthened EMRIP has an important role to play to assist states in promoting learning, developing best practices, and achieving important policy objectives under UNDRIP.
  - With respect to the Expert Mechanism mandate, Canada believes that any new function should avoid duplication with the mandates of the Special Rapporteur on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues or any other United Nations institution that may have expertise and capacity which the Expert Mechanism lacks.
  - Canada can support the creation of a treaty-like state review function related to the United Nations Declaration on the Rights of Indigenous Peoples, either as part of the Expert Mechanism's mandate, another existing mechanism, or as a new mechanism – the list of caveats for further discussions are outlined in the remainder of responses in Question #5 and in Question #6.
  - Canada supports all efforts by the United Nations Indigenous mechanisms to avoid duplication of efforts and increase efficiency and thus can support efforts by EMRIP, in association with broader United Nations Indigenous mechanisms, to:
    - i. avoid duplication of efforts and increase efficiency, especially through increased use of technology,
    - ii. streamline and strengthen EMRIP working methods by adopting a more focused agenda highlighting fewer reports and recommendations, and
    - iii. make more targeted use of existing resources.
  - Canadian Indigenous groups have a high degree of interest in in respect to proposed (EMRIP) reforms. Canada will need to seek further direction and engagement with domestic stakeholders (e.g. Indigenous groups) once EMRIP structural, governance (i.e. cost, capacity issues), policy orientations and related issues become more fully defined.
  - Canada supports a focus on reports that provide examples of best practice by Member States in achieving the ends of the UN Declaration on the Rights of Indigenous Peoples.

- EMRIP, at the request of a Member State and within existing resources, would be in a position to review and provide advice on possible improvements to domestic legislation and policy in relation to the rights of Indigenous people.
  - EMRIP's mandate needs to remain a mechanism that provides flexibility in approaches in regards to national circumstances and serve as a roadmap for engagement between states and their Indigenous Peoples, thus avoid the temptation to seek "one-size fits all solutions" or a check-list approach.
  - The enhancement of EMRIP's independent capacity to evaluate, examine and promote best practices, learning and technical assistance with regards to key UNDRIP articles such as: duty to consult (free, prior and informed consent); fiduciary duty; historical treaty; Indigenous rights and title; and the range of socio-economic rights issues emerging to the forefront (i.e., education, environment/climate change, health, housing, children, etc.).
  - EMRIP may wish to undertake a review of proposed (and/or existing) leading edge jurisdictions and their legislation in regards to how a country's domestic set of laws can best be in harmony with the Declaration.
6. Do you have any comments or suggestions concerning the composition and working methods of the Expert Mechanism?
- Before considering new responsibilities, it would be important to determine to what extent EMRIP is able to effectively fulfill its current mandate. Does it have adequate resources, capacity, and technical expertise to meet its current mandate?
  - Many States already have robust Monitoring and Evaluation functions within key Ministries responsible for Indigenous Affairs. How can one ensure that a new mandate for EMRIP to undertake such work would not overlap or duplicate the work already being done by Member States?
  - Given that States may undertake their own Monitoring and Evaluation, are there areas that are not currently being addressed by national bodies that could be considered high value-added work (e.g., horizontal policy formulation, coordination and integration of program delivery, ability to address specific themes, etc.)?
  - It is recognized that policy frameworks, legal institutions and the ability to deliver effective programs and services vary significantly from one country to another, and that many states could benefit from the sharing of best practices, lessons learned and other experiences among governments which often face similar challenges.
  - Monitoring and Evaluation studies can be powerful tools, particularly for the purposes of supporting organizational learning, policy development and identifying ways and means to improve program delivery.
  - To reach their potential, it is important that such studies be undertaken in accordance with the highest professional standards of conduct. The undertaking of value-added Monitoring and Evaluation studies requires a high degree of professional training and discipline. In addition to having the required expertise, it is generally recognized that

Monitoring and Evaluation functions need to have a high degree of objectivity and independence in order to be truly effective.

- Proper studies require adequate resources for professional services, travel, data collection and analysis, report preparation, etc. Who would pay for such studies?
- It would be important to clarify who would be the clients (and/or beneficiaries) of individual studies. How would Terms of Reference be developed? Who would approve them?
- How would the findings, conclusions and recommendations of Monitoring and Evaluation studies be presented to key stakeholders, including the jurisdiction being evaluated? Should findings be further disseminated to a broader audience to foster organizational learning, benchmarking, etc.?
- It is recommended that EMRIP consult seasoned evaluation experts and/or commission the development of an Evaluation Framework at the earliest opportunity in order to better define the scope, purpose, recommended approach and other technical parameters of a new Monitoring and Evaluation function. Such a study should help to answer the most basic questions regarding the new function (what, why, how, where, who, etc.). The study should also provide a rough estimate of the financial resources and technical capacities required to undertake such work in accordance with recognized professional standards. The Evaluation Framework could also explore practical options to address the intent of the EMRIP mandate recommendation; for instance, the use of special advisors and consultants or the building of in-house capacity (which would likely be the most expensive option) over a defined period of time.