



Center for World Indigenous Studies

PMB 214, 1001 Cooper PT RD SW 140
Olympia, Washington 98502 USA

13 March 2016

Center for World Indigenous Studies response to the Questionnaire concerning the Review of the Expert Mechanism on the Rights of Indigenous Peoples Mandate answering the World Conference on Indigenous Peoples Outcome Document

1. What are the most valuable aspects of the current mandate of the Expert Mechanism on the Rights of Indigenous Peoples?

- a. The EMRIPs responsibility for developing research and reports in the areas of education, language, indigenous peoples' right to participate in decision-making is perhaps the most important aspect of the current mandate and that indigenous as well as state's parties can be directly involved in communications and information sharing.
 - i. Shortcomings include: These studies are not widely reviewed by affected indigenous or states' parties as well as indigenous parties indirectly concerned with the study and neither are they widely critiqued outside the UN system.
 - ii. Shortcomings include: Research and study methods do not appear to be evaluated for differing types of studies raising questions about validity and efficacy.
- b. Another strength is the ability of EMRIP members to internally cross assess study results and critique those results.
- c. A significant aspect of the current mandate involves direct engagement between EMRIP and indigenous and state's parties concerned with relevant studies.
 - i. Shortcomings include: Follow-up critiques and analysis by affected parties after initial reviews thus permitting more thorough adjustments in advance to UNCHR receipt of study results.
 - ii. Shortcomings include: The inability under the current mandate for EMRIP to undertake independent studies responding to either indigenous or state party requests.

2. How can the Expert Mechanism's role in assisting States to monitor, evaluate and improve the achievement of the ends of the Declaration be strengthened?

- A. The Expert Mechanism can be significantly improved if, and only if, the concerned State enters into a mutually determined Memorandum of Understanding with EMRIP affirming the voluntary nature of the Understanding to which indigenous nations may add their endorsement and commitment to cooperate. By undertaking a mutually determined Memorandum of Understanding that affirm voluntary engagement between EMRIP, the State and concerned Indigenous parties prior understandings can facilitate more effective access for studies.
- B. A mutually determined Memorandum of Understanding may identify the relevant paragraphs of the UNDRIP and WCIP Outcome Statement to frame the nature and extent of any single study.
- C. A mutually determined Memorandum of Understanding would specifically affirm the methods and relevant party representatives engaged in a coordinated effort.
- D. The current mandate requires the EMRIP to act in accord with directives from the Council on Human Rights that may shield EMRIP and the Human Rights Council from considering and examining critical matters of interest and importance to specific states and indigenous parties. The current mandate should be modified to release EMRIP from the requirement to respond to the Human Rights Council solely.

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?

- A. The EMRIP already coordinates with the Special Rapporteur on the Rights of Indigenous Peoples and to some extent with the Permanent Forum on Indigenous Issues, but all three bodies are merely advisory and without effective authority to advance findings and recommendations. The EMRIP should have its current mandate changed to establish the body as an independent hearing, investigation and study mechanism with direct authority to issue interagency and UN Committee statements, observations, and recommendations. Similarly the EMRIP must be recognized to independently submit statements, recommendations and observations to Treaty bodies and independent regional multilateral organizations coordinated with the authority of the Economic and Social Council.

4. Do you envision a role for the Expert Mechanism in supporting States in the implementation of Universal Periodic Review, treaty body and special procedures recommendations relating to the rights of indigenous peoples?

1. The Expert Mechanism will benefit the Universal Periodic Review process by becoming a formal recipient of such reports, but it should not stand to provide a

- critique of such reports. The Expert Mechanism may simply use the UPR as an indicator of state perspective that may be relevant in specific studies.
2. The Expert Mechanism may benefit States' parties by issuing observations and recommendations to treaty bodies noting the relevance of indigenous peoples' concerns to the implementation of treaty provisions while making specific recommendations for indigenous and state party engagement when relevant to suggesting constructive communications between State parties and indigenous parties affected by action or inactions within the context of treaty provisions.

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?

1. An expanded mandate beyond the current themes (including the following) can support State interests as well as indigenous peoples' interests by helping to cast new international light on subjects framed in the UNDRIP (Articles 30 and 40), but not specifically noted in the WCIP Outcome Document contributing to improved understanding and advancement of peaceful relations. States parties as well as many indigenous nations experience intractable conflicts that may be mitigated or mediated with international intervention even though states and indigenous nations may assert the inviolability of claims against interventions into the internal affairs of a state. It is evident that the international community has long since concluded that "non-intervention" into the internal affairs of a state has exceptions (e.g. crimes against humanity [genocide], apartheid, terrorism, and a recognized threat to the peace).
 - a.) *New Mandate:* monitor the conduct of intergovernmental negotiations and agreements (including pre-existing and current agreements and other constructive arrangements) between indigenous constitutional and customary governments and states' governments as an expansion of the current mandate theme "**indigenous peoples' right to participate in decision-making**" with the possibility of identifying pathways to the negotiation of protocols for implementing the UNDRIP consistent with the WCIP Outcome Document.
 - b.) *New Mandate:* monitor changes in the political status of indigenous peoples consistent with Article 3 of the UNDRIP emphasizing the "political right of self-determination." This mandate recognizes that indigenous peoples are politically evolving in their political identity and that process requires understanding at the international level.
 - c.) *New Mandate:* monitor and document for purpose of reporting to treaty bodies and through the EcoSoc to the UN Security Council violent conflicts between indigenous parties and between indigenous parties and states' governments. Indigenous peoples are engaged in violent conflicts with states and as indirect

parties to non-state and state conflicts without international considerations of the status and rights of indigenous peoples in these conflicts.

d.) *New Mandate*: monitor and document the placement of hazardous materials including but not limited to radioactive materials and toxic chemicals in indigenous territories and monitor and evaluate measure to restore human, environmental and cultural health when such materials have been placed in indigenous territories without their free, prior and informed consent. This new mandate will fill the gap left open in the UNDRIP in Article 29 (2) & (3) where it must be noted that radioactive material storage is currently located in 20 territories worldwide (in Africa, the North America, Asia and the Pacific without their free, prior and informed consent.

6. Do you have any comments or suggestions concerning the composition and working methods of the Expert Mechanism?

Three factors are important to the constitution of the EMRIP with new mandates and roles as an independent body:

1. Sufficient members to address expanded mandate themes and responsibilities including a balance between indigenous experts and state experts while avoiding a too large body that would be unwieldy.
2. Establishment of a Chair as an “odd” seat to serve as the communications lead and accountable lead.
3. Rotation of the Chair between indigenous and state experts with a replacement process based in consensus that introduces new participants while maintaining historical knowledge in the participants.
4. Setting five year terms and staggering membership terms to allow for introduction of fresh ideas, thinking and capacities while maintaining historical memory.
5. Holding the cost of operations to a minimum but recognizing the broader mandates create significant demands.

To undertake a monitoring as well as study role in the UN system as currently suggested the EMRIP must be expanded to accommodate these important roles. Manageable membership ought to be 13 with six indigenous experts and six state experts with a rotating chairmanship where a thirteenth member specifically designated from the 13 member body (indigenous expert would chair for a specified terms and then replaced by a state expert for a specified term) would be elevated every five years. With the elevation of a member to the Chair a new member will be added to the body at the end of the term of current members (whose terms should be staggered) to reconstitute the twelve-member body. After the Chair’s term is completed that person will retire and be replaced by an elevated member. Following the ending of the second Chair’s term that person will retire allowing for a potential of ten years serving. Ultimately this will allow for reconstitution of the body of twelve, maintain stability and accountability of the Chair as well as allow for rotation between the indigenous experts and state experts. Elevation to the Chair would necessarily occur by consensus of the 12 members. Each member must be an

independent expert with research, investigative, as well as political knowledge of state and indigenous peoples' interests. Attorney's must not be allowed to dominate the expert panel and nor should any specific field of study. An effective interdisciplinary nature of the expert panel must be maintained so that no discipline dominates.

The cost of EMRIP must be borne by those states and indigenous nations that can afford to contribute to both the cost of EMRIP and the Voluntary Fund.

On behalf of the Center for World Indigenous Studies Board of Directors,

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rudolph C. Ryser". The signature is fluid and cursive, with the first name being the most prominent.

Rudolph C. Ryser, Ph.D.
Chair of the Board
360-450-5645
chair@cwis.org
cwis.org