

Expert Workshop on the Review of the Mandate of the Expert Mechanism on the Rights of Indigenous Peoples

March 2016

The New Zealand Human Rights Commission welcomes the opportunity to submit a written contribution to the Expert Workshop on the Review of the Mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). The Commission makes this brief submission in support of a strengthened mandate for the EMRIP.

The Commission supports an expanded mandate for the EMRIP which includes the elements agreed by the members of EMRIP, and outlined in the report of the eighth session. Namely:¹

- Maintaining elements of the current mandate, including thematic studies
- Playing a stronger role in facilitating implementation of the UNDRIP, including by supporting States to prepare national strategies
- An increased role in facilitating dialogue between states and indigenous peoples
- Greater engagement with the universal periodic review, special procedures and treaty bodies, including assisting States to implement recommendations and acting as a bridge between indigenous peoples and the UN human rights system
- Gathering and disseminating information on good practices and issuing general comments.

In the Commission's view, the thematic studies undertaken by the EMRIP are a particularly valuable aspect of its current mandate. The studies (and resulting reports and advice) are a useful information resource and advocacy tool, and also provide the opportunity to examine and review particular issues through the process of making submissions to the studies.

Another useful aspect of the EMRIP's current mandate is the collection and dissemination of information on good practices. Again, the studies are extremely helpful in this regard. So too are the questionnaires issued by the EMRIP in relation to UNDRIP implementation. However, the level of response to the questionnaires and the responses themselves highlight in our view, a degree of lack of engagement and action by States. This underlines the need for an increased and more active role for the EMRIP to support and facilitate implementation of the UNDRIP.

The Commission strongly supports greater engagement between the EMRIP and other UN mechanisms, particularly the universal periodic review process and treaty body monitoring. We would also suggest additionally the High Level Political Forum that will receive reports on progress of the Sustainable Development Goals, given the relevance and potential contribution to advancing indigenous rights which implementation and monitoring of the SDGs could provide. We believe that greater engagement and additional monitoring and support from the EMRIP could significantly assist in ensuring that treaty bodies and other UN

¹ *Report of the Expert Mechanism on the Rights of Indigenous Peoples on its eighth session*, 19 August 2015, A/HRC/30/52, at p 8. Accessible at: <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Session8.aspx>

forums are well informed on indigenous rights and apply an UNDRIP lens to their work. Greater engagement could also help to ensure that recommendations are sound, effective, and consistent across the various bodies. Alongside a stronger monitoring role for the EMRIP this could both strengthen the recommendations and add weight to the case for their implementation.

The Commission is very supportive of the notion of EMRIP playing a role as a 'bridge between indigenous peoples and the UN'. Because of the confidence that indigenous peoples have in the EMRIP, and the expertise that the EMRIP could bring to other UN forums, we consider that strengthening this role could make a significant contribution to improving the responsiveness and effectiveness of UN bodies, and encourage greater participation by indigenous peoples in those processes. A strengthened system could also explore ways to assist indigenous peoples through funding and resource support to attend and participate in UN processes. The Commission also sees a useful role for the EMRIP in encouraging and facilitating dialogue between States and indigenous peoples and supports this proposition.

The Commission is supportive of a strengthened role for the EMRIP in supporting States to prepare national strategies for the implementation of UNDRIP. The importance of national action plans, identifying specific steps taken to effectively implement the UNDRIP was highlighted in the statement of the Special Rapporteur on the Rights of Indigenous Peoples to the 2015 EMRIP session:²

... I think that one of the most important points is the commitment by States to develop National Action Plans. Paragraph 8 of the WCIP Outcome Document (A/69/2) states, "*We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies and other measures, where relevant, to achieve the ends of the Declaration*". What we are looking for are steps taken to effectively implement the UN Declaration and these can be seen and felt more at the national level. Obstacles and challenges faced in the implementation of the Declaration should be analyzed and addressed in a national action plan. It is my hope that through the years States will come to the UN General Assembly or at the UN Human Rights Council to report on what they have done to implement this commitment.

The New Zealand Government has expressed support for the UNDRIP since 2010. In 2014 it accepted a number of recommendations through New Zealand's second Universal Periodic Review, including the recommendation to "take concrete measures to ensure the implementation and promotion of the Declaration".³ New Zealand's support for the Declaration has been further affirmed through its support for the Outcome Document of the World Conference on Indigenous Peoples (WCIP), which included commitments to cooperate with indigenous peoples to develop national strategies, action plans and other

² Statement of the UN Special Rapporteur on the Rights of Indigenous Peoples to the 8th session of the EMRIP: Follow up to the World Conference on Indigenous Peoples, 20 July 2015. Accessible at: <http://unsr.vtaulicorpuz.org/site/index.php/statements/74-emrip-2015-follow-wcip>

³ *Report of the Working Group on the Universal Periodic Review: New Zealand*, 7 April 2014, A/HRC/26/3, at para 128.89. Accessible at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NZSession18.aspx>.

measures to implement the UNDRIP.⁴ New Zealand has since reiterated its support for the Outcome Document and has called on other states and the UN system to implement it.⁵

In New Zealand there are a range of policies and programmes which give effect to different elements of the UNDRIP. These include: a Māori health strategy, Māori education strategy and Māori housing strategy. Such strategies are often aimed at addressing the inequalities that continue to affect Māori. The most robust of these strategies make explicit reference to the Treaty of Waitangi⁶ and reflect UNDRIP principles such as participation and self-determination to some degree. However, despite these positive measures, the UNDRIP remains largely invisible overall. There is little progress evident in terms of establishing a systematic, coordinated and deliberate approach to UNDRIP implementation – one that can be “seen and felt” to any meaningful degree.

In 2015, the independent monitoring mechanism for the UNDRIP established in New Zealand by the national forum of indigenous leaders, noted in its inaugural report that despite the strategies and programmes that are in place, the government had not developed a systematic national implementation plan. The mechanism’s report outlined the challenges this created for UNDRIP implementation:⁷

Since endorsing the Declaration, the New Zealand government has not undertaken any comprehensive planning across government to determine whether existing or new legislation, policies or activities are consistent with the Declaration. There is no focal point within government responsible for the implementation of the Declaration and no targeted resources to ensure its implementation. Initiatives to advance Tangata Whenua development to date have been largely ad hoc or driven by Tangata Whenua, sector or community action. The absence of proactive government and departmental commitment to develop a national plan to deliver on its obligations under the Declaration make it difficult for the government and for independent bodies to monitor and measure progress, impact or performance against the Declaration.

The New Zealand Human Rights Commission welcomes the establishment of the independent monitoring mechanism, as a significant forum and focal point for advancing indigenous rights in New Zealand. It also provides an excellent opportunity for the New Zealand government to work collaboratively and cooperatively with the monitoring mechanism to promote and implement the Declaration. A strengthened monitoring mandate for the EMRIP could, in our view, assist and support the work of the mechanism and could encourage greater engagement and response from government. For example, a more formalised process for indigenous peoples’ mechanisms to report to the EMRIP, and which encouraged and monitored government responses to such reports, could both help to facilitate engagement between indigenous peoples and government as well as encourage implementation.

⁴UN General Assembly, (2014), *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, A/RES/69/2. Accessible at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/2

⁵ Statements by Ambassador Philli Taula, Charge d'affaires a.i., of New Zealand, 21 and 29 October 2014. Accessible at: <http://www.nzembassy.com/united-nations/new-zealands-un-statements/human-rights>.

⁶ The 1840 treaty between representatives of the British Crown and Māori

⁷ *Submission from the Monitoring Mechanism regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand*, 10 July 2015, A/HRC/EMRIP/2015/CRP.3. Accessible at: <http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session8/A.HRC.EMRIP.2015.CRP.3.pdf>

Similarly, a formalised reporting process could also be valuable from a national human rights institution's perspective, providing a useful focal point for NHRIs' monitoring and reporting activities. This would be particularly helpful if the links between the EMRIP and other UN human rights bodies are also significantly strengthened and the respective processes are complementary and mutually reinforcing.

The Commission welcomes the acknowledgement by the EMRIP and through the WCIP outcome document of the role of NHRIs in promoting indigenous rights and brokering dialogue. The Commission believes that a strengthened EMRIP could support NHRIs considerably in that role.

In conclusion, the New Zealand Human Rights Commission supports an enhanced role for the EMRIP and looks forward to the outcome of the Expert Workshop.