

Strengths and limitations of the current mandate

Speaking notes: Tracey Whare

Tēnei tētahi mihi ki nga tāngata katoa kua huihui mai nei i tēnei ra, ki te whitiwhiti kōrero i tēnei kaupapa. He mihi mahana ki tōkū whanaunga no Aotearoa, whaea Aroha Mead, tēnā koe. He mihi hoki ki tōkū whanaunga no te Pacific, ki te Moana nui a Kiwa, tēnā koutou katoa. A, ki ngā tāngata whenua o te ao whānui me ngā kaimahi o ngā kawanatanga o te ao, tēnā koutou tēnā koutou tēnā koutou katoa.

I have been tasked with providing some comments on the strengths and limitations of the current mandate of EMRIP. At the outset, I would state that my comments are based upon my personal experience as an indigenous participant in a number of the sessions of EMRIP. I have also taken into consideration the views that have been expressed through written submissions sent to the Office of the High Commissioner for Human Rights as well as discussions I have held with indigenous colleagues.

Following my comments on the strengths and weaknesses of the current mandate I will also make some preliminary comments on the the principles that should underpin this review process.

In terms of the strengths of the current mandate, I would make the following **two** comments.

Firstly, the accessibility of EMRIP to indigenous peoples is important and key to its ability to reflect upon and address their issues. The accreditation process provides for indigenous representatives and institutions to participate alongside states regardless of the status of their particular organisation within the UN system. This key component of accessibility is crucial and in my view must be maintained.

Secondly, while the thematic research undertaken by EMRIP has been its main focus, it is difficult to determine the value or benefit of such studies beyond EMRIP itself. What is perhaps of most importance are the expert advice papers that EMRIP has created which have built upon such studies and which have articulated clear guidelines and principles as to how rights within the UN Declaration on the Rights of Indigenous Peoples are to be realised. The follow-up question therefore is how best to use the expert advice papers within EMRIP as well as how to ensure their use within country specific situations.

In my view, these two components of the current mandate are important and are worth maintaining.

In terms of the limitations of the current mandate, I would make the following **three** comments.

Firstly, there is a strong sense that a focus on thematic studies is not sufficient and that the ongoing pressing issue for indigenous peoples is the realisation of the UN Declaration on the Rights of Indigenous Peoples within their specific country contexts. There are other fora where issues and

violations of rights can and should be addressed but what is clearly missing from the UN is the ability to proactively engage in the implementation of rights at the country level i.e. for states and indigenous peoples to collectively consider what implementing the Declaration means in their particular context. In this sense, the mandate of EMRIP could in concrete and useful ways address this implementation gap and thus go some way to preventing further rights violations. A focus on proactive engagement would in my view strengthen the existing mandate.

A **second** limitation is the ability of EMRIP to carry out its work independently, within the broad mandate of the Human Rights Council. Currently it is the Human Rights Council that establishes what theme and the timeframe by which such thematic research is carried out. This does not allow EMRIP to engage in a programme of work that it considers to be of priority. It also curtails the independence of the experts.

A **third** limitation is the process by which experts are determined as well as the criteria that are used. The criteria should be clearer and the process should be more transparent. A strengthened mandate would be best served by ensuring experts of the highest calibre are appointed and the process itself should reflect in tangible ways the right of indigenous peoples to participate in decisions affecting them.

In terms of the principles that should underpin this review process, it goes without saying that the normative framework must be the UN Declaration on the Rights of Indigenous Peoples. Whatever renewed mandate is agreed upon must in itself serve as an example of best practice for the UN system meaning that the way it is established through constructive dialogue between indigenous peoples and states as well as the substantive content that it produces must reflect the rights enshrined in the Declaration.

Secondly, a renewed EMRIP must ultimately be supported by states both in its creation and use. Previous sessions of EMRIP reflect strong attendance from some regions but not all. It is incumbent upon all states to prioritise attendance at EMRIP and engage with indigenous peoples in constructive and meaningful ways.

The **last** comment I would make is of a more practical nature. A renewed and strengthened mandate is likely to require greater financial resources. To this end, it would be helpful if during our discussions over the next two days that states indicate what level of financial support they are prepared to contribute to EMRIP. Without sufficient financial backing, it will not be possible for a renewed mandate to be undertaken in a way that is expected and required.