

Expert Mechanism on Rights of Indigenous Peoples

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Introduction:

Under the re-structuring/reorganization of the UN Commission on Human Rights (CHR) into the UN Human Rights Council (HRC), mechanisms under the former CHR were reviewed and the UN Working Group on Indigenous Populations (WGIP) was eventually dissolved in 2006. Indigenous leaders and representatives lobbied for the retention of the UNWGIP because it is very important to maintain a mechanism within the HRC that will address the particular human rights issues and concerns of indigenous peoples.

With the support of the government of Bolivia and other friendly governments to indigenous peoples and strong lobby from indigenous leaders, finally the HRC passed a resolution to establish Expert Mechanism on Rights of Indigenous Peoples as subsidiary organ of HRC. The resolution was a watered down version of the proposals made by indigenous peoples. Nevertheless, indigenous representatives agreed not to oppose it in light of the urgent need to have a mechanism established under the HRC that will address the human rights issues of indigenous peoples.

Mandate of the Expert Mechanism

- a. The HRC establishes the Expert Mechanism as a subsidiary expert body with the mandate to provide the Council with thematic expertise on the rights of indigenous peoples in the manner and formed requested by the Council.¹
- b. The resolution stipulates that the thematic expertise of the Expert Mechanism should focus mainly on studies and research-based advice, although it may suggest proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.²
- c. To report annually to the Council on its work.

Composition of the Expert Mechanism

The EMRIP is composed of five independent experts and that the selection and appointment process, give due regard to experts of indigenous origin. Members serve at different period and may be re-elected for another period. Currently all members of EMRIP are indigenous origins.

Methods of Work

The Expert Mechanism:

- a. meets once annually for five days, and that the sessions may be a combination of open and private meetings;

¹ A/HRC/RES/6/36, December 2007, operative paragraph 1

² A/HRC/RES/6/36, December 2007, operative paragraph 1 (b)

- b. determines its own methods of work, although the Expert Mechanism shall not adopt resolutions or decisions;
- c. is open to the participation, as observers, of States, indigenous peoples' organizations and NGOs, UN agencies and others
- d. in order to enhance cooperation and avoid duplicating the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum, shall invite the Special Rapporteur and a member of the Permanent Forum to attend and contribute to its annual meeting;

Achievement of EMRIP

So far, the EMRIP has done two studies and the first one is on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education and it was concluded in 2009. The second study is the indigenous peoples and the right to participate in decision-making. The study was concluded and submitted to HRC in September session of this year.

The study on the right of indigenous peoples to education, which was completed subsequent to EMRIP's second session in October 2009, was submitted to the HRC at its 12th session. It also included the Expert Mechanism Advice No. 1 (2009) on this particular theme.³ The HRC acknowledged the report as an important contribution that is helpful to their own understanding of indigenous ways of learning and that it provided valuable guidance as on how best to improve education for indigenous peoples. It was also seen as a useful tool in ensuring quality education that is culturally appropriate. In its resolution 12/13, the HRC welcomes the successful completion of the study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education (A/HRC/12/33), and strongly encourages States to disseminate it broadly and to take it into account when elaborating national plans and strategies.

The report of study on "indigenous peoples and the right to participation in decision-making" was submitted in the 18th session of HRC. The report was welcome by HRC and encourages all interested parties to consider them a practical guide on how to attain the goals of the UN Declaration on the Rights of Indigenous Peoples.

Challenges and Opportunities

There are new developments in the HRC that can be taken into account as positive trends. During the 18th session of HRC, half-day podium discussion on the rights of indigenous peoples was conducted. Again in the 18th session, the HRC requests to the Expert Mechanism to undertake, with the assistance of the Office of the High Commissioner, a questionnaire survey to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.⁴

³ Education Report (see A/HRC/12/33)

⁴ A/HRC/18/L.23

As mentioned has been made in the above, the HRC appreciates and welcomes the reports made by the EMRIP. However, there is no clear mechanism for implementation of the reports. The HRC urges the States to take into account the reports when they develop relevant national strategies. In this regard, NGOs, NHRIs and others can make contributions through incorporation of status of implementation of the reports and resolutions in their reports to UPR processes.

In WGIP, indigenous participants could share situation of human rights in their communities but such mandate is not vested in the EMRIP and attempts to present situation of human rights are interrupted in the session. The EMRIP needs to find means to solve this problem.

Lastly, EMRIP could not choose theme for study by its own but it can make proposal to table to HRC for approval. This procedure should be amended in the future review of HRC.