

**Brainstorming on Modifying and Improving the Mandate of the Expert
Mechanism on the Rights of Indigenous Peoples
University of Arizona**

February 2015

The University of Arizona, Indigenous Peoples Law and Policy Program hosted a meeting on 19 and 20 February 2015 to discuss paragraph 28 of the Outcome Document of the World Conference on the Rights of Indigenous Peoples. In particular, the purpose of the meeting was to discuss informally and brainstorm about possible ways to modify and improve the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (the EM), in accordance with paragraph 28.

The meeting brought together an ad hoc group of persons knowledgeable and with experience about the United Nations human rights system as it applies to indigenous peoples. Participants included a member of the EM, Chief Wilton Littlechild, the Special Rapporteur on the Rights of Indigenous Peoples, Vicky Tauli Corpuz, and members of the secretariats of the EM, Antti Korkeakivi and Juan Nunez, and of the Permanent Forum on Indigenous Issues, Maia Campbell. Other participants included S James Anaya, Albert Barume, Andrea Carmen, Claire Charters, John Henriksen, Elifurah Laltaika, Kanyinke Sena, Sharon Toi and Robert A Williams Jr.

The following points and ideas were raised at the meeting:

1. There are limitations to the current mandate of the EM, with its exclusive focus on thematic studies determined by the Human Rights Council. Paragraph 28 of the Outcome Document presents an important opportunity for improving the EM's mandate.
2. There are many existing recommendations to States from human rights bodies to recognize, protect and promote the rights of indigenous peoples, which cover a range of issues.
3. There is a need for the practical and technical implementation at the national level of human rights bodies' recommendations relevant to indigenous peoples, including recommendations from special procedures, especially the Special Rapporteur on the rights of indigenous peoples, human rights treaty bodies, the Human Rights Council UPR, regional human rights bodies and other relevant monitoring mechanisms.
4. There is a need to facilitate engagement between States and indigenous peoples towards overcoming obstacles to the implementation of human rights, including those affirmed in the Declaration on the Rights of Indigenous Peoples.
5. The improvement of the EM's mandate is connected to other objectives of the Outcome Document of the World Conference, including

implementation of the Declaration on the Rights of Indigenous Peoples and the development of national action plans.

6. There are various institutional models for improvement of the EM mandate that might be drawn upon. Participants focused on the following two potential options:
 - a. The model of the Human Rights Council's special procedures Working Groups (for example, the Working Group on Enforced and Involuntary Disappearances and the Working Group on Arbitrary Detention). These have mandates to send and receive communications on specific cases, undertake country visits, conduct thematic studies, and provide assistance and advice to States to overcome obstacles to implementing relevant human rights. In this respect, the following considerations were raised:
 - i. Potential duplication with the mandate of the Special Rapporteur on the rights of indigenous peoples;
 - ii. The potential to merge the Special Rapporteur's mandate with a working group;
 - iii. The advantages of the Special Rapporteur's mandate in that it is made up of only one person, and it is dynamic and flexible;
 - iv. The institutional location of such working groups is among the special procedures of the Human Rights Council, whereas the EM is currently a unique subsidiary body of the Human Rights Council.
 - b. Another, alternative institutional model discussed is one in which the EM would remain as a unique subsidiary body of the Human Rights Council, but its mandate would be modified to enable it to focus on the implementation of country-specific recommendations of other human rights bodies. This work could be done without an independent fact finding function. The results of this engagement could be reported to the Human Rights Council. The expanded mandate could include:
 - i. Facilitating face to face dialogue between States and indigenous peoples' representatives, including possibly at the national level;
 - ii. Providing practical and technical assistance and advice to States, indigenous peoples and the private sector to overcome obstacles to implementing the recommendations;
 - iii. Preparing 'implementation plans' together with indigenous peoples' representatives, relevant state bodies, national human rights institutions and other relevant bodies;
 - iv. Building upon the recommendations of human rights bodies for which there is a substantial consensus between States and indigenous peoples, and/or among human rights mechanisms;

- v. Providing an opportunity for States and indigenous peoples to convey information on developments regarding the implementation of human rights bodies' recommendations;
 - vi. Conducting thematic, country or case specific hearings with the participation of States and indigenous peoples.
7. Other options for modifying and improving the EM's mandate in accordance with paragraph 28 included the following:
- a. For the EM to contribute to and support the Human Rights Council UPR process, for example, by reporting on States' implementation of existing recommendations by human rights bodies (thereby promoting implementation of paragraph 29 of the Outcome Document to the World Conference on Indigenous Peoples). This could be similar to the OHCHR compilations of recommendations made in the context of the UPR process.
 - b. For the EM to work with national human rights institutions, law reform commissions, and other relevant actors at the national level with a focus on cooperating to facilitate the implementation of the rights of indigenous peoples (consistent with the Outcome Document of the World Conference on Indigenous Peoples paragraph 30).
8. In regards to the working methods of the EM, they should be determined by its mandate in broad and flexible terms. For example, the frequency and structure of its meetings will follow from its mandate functions. The specific working methods could be developed by the expert members of the EM and the secretariat.