

Questionnaire to Indigenous Peoples' Organizations

The secretariat of the UN Permanent Forum on Indigenous Issues invites Indigenous Peoples' Organizations to complete the attached questionnaire on any action taken or planned related to indigenous peoples' rights, policies and the implementation of the UN Declaration on the Rights of Indigenous Peoples, the outcome document of the World Conference on Indigenous Peoples and recommendations of the Permanent Forum on Indigenous Issues. Questionnaire responses will be placed on the Permanent Forum's website and also compiled into one report for the Forum's fifteenth session.

Please submit your completed questionnaire by **1 January 2016** to:

Secretariat of the Permanent Forum on Indigenous Issues
Division for Social Policy and Development
Department of Economic and Social Affairs
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The fifteenth session of the Permanent Forum on Indigenous Issues shall be held at United Nations Headquarters in New York from 9 to 20 May 2016.

The provisional agenda for the Permanent Forum's fifteenth session includes:

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Follow-up to the recommendations of the Permanent Forum.
4. Implementation of the six mandated areas of the Permanent Forum with reference to the United Nations Declaration on the Rights of Indigenous Peoples.
5. Discussion on the theme "Indigenous peoples: conflict, peace and resolution".
6. Dialogue with indigenous peoples.
7. Dialogue with Member States.
8. Dialogue with United Nations agencies, funds and programmes.
9. Coordination among the three United Nations mechanisms pertaining to indigenous peoples:
 - (a) Coordination among the three United Nations mechanisms pertaining to indigenous peoples;
 - (b) Dialogue with the Special Rapporteur on the rights of indigenous peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples.
10. Future work of the Permanent Forum, including issues considered by the Economic and Social Council and emerging issues.
11. Provisional agenda for the sixteenth session.
12. Adoption of the report of the Permanent Forum on its fifteenth session.

Questionnaire

1. Please provide the name of your organization and the country where it is based.

Mi'kmaq Rights Initiative/ Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) based in Nova Scotia, Canada.

2. What are the main objectives and goals of your organization?

Mission Statement:

The Mission of Kwilmu'kw Maw-klusuaqn Negotiation Office is to address the historic and current imbalances in the relationship between Mi'kmaq and non-Mi'kmaq people in Nova Scotia and secure the basis for an improved quality of Mi'kmaq life. KMKNO will undertake the necessary research, develop consensus positions on identified issues, and create public and community awareness in a manner that supports the ability of the Assembly to fully guide the negotiations and the implementation and exercise of constitutionally protected Mi'kmaq rights. KMKNO is committed to moving forward at a pace determined by the Mi'kmaq themselves, and to balancing individual First Nations autonomy with the collective Mi'kmaq identity, governance and decision making required to re-institute Mi'kmaq ways of operating.

FIVE PILLARS OF THE ORGANIZATION:

1.To achieve recognition, acceptance, implementation and protection of treaty, title, and other rights of the Mi'kmaq in Nova Scotia;

2.To develop systems of Mi'kmaq governance and resource management;

3.To revive, promote and protect a healthy Mi'kmaq identity;

**4.To obtain the basis for a shared economy and social development;
and**

5.To negotiate toward these goals with community involvement and support.

3. Which indigenous groups does your organization represent and what is the total number of indigenous peoples within these groups?

We work on behalf of the assembly of Nova Scotia Mi'kmaq Chiefs. The Assembly of Nova Scotia Mi'kmaq Chiefs is the highest level of decision making in the negotiation process. Decision is made by way of motion. All consultation and negotiations decisions and directions are obtained at this level. The Assembly meets on a monthly basis. The Assembly comprises of 13 NS Mi'kmaq Chiefs and 2 ex-officio members. The ex-officio members includes the Assembly of First Nations Vice Chief, and the Grand Chief of the Mi'kmaq Grand Council (our traditional governance structure that was in place since time immemorial – the Grand Chief represents the entire Mi'kmaq territory called Mi'kma'ki which includes Nova Scotia, New Brunswick, Québec, Prince Edward Island and Maine). Please note, although all 13 Chiefs sit on the Assembly, at this time, we currently work on behalf of only 12 of these bands in negotiation and consultation. KMKNO does not work on behalf of Sipekne'katik.

Each Mi'kmaq Chief of the Assembly is elected for their community. There are 13 Indigenous communities/bands in Nova Scotia, all of which are Mi'kmaq and therefore the chiefs are the highest level of decision-making on all First Nation issues in Nova Scotia.

There are approximately 15,000 Mi'kmaw in Nova Scotia.

4. Has your Organization participated in any sessions of the Permanent Forum on Indigenous Issues? If yes, please indicate the year(s).

KMKNO participated in 2014.

5. In what ways does the Permanent Forum on Indigenous Issues support indigenous peoples in your organization?

The Native Women Association of Canada and the AFN National Chief participate in PFII, and the Mi'kmaq of Nova Scotia have elected representation on these bodies, however, our organization, has not had any direct interaction with PFII as of yet.

6. At its fifteenth session in 2016, the Permanent Forum's theme will be **Indigenous Peoples: conflict, peace and resolution**. Please provide information as to whether your organization is working on issues related to conflict, peace and resolution for indigenous peoples. Where possible, please include information on the situation of indigenous women in your responses.

We are working on the implementation of Mi'kmaq Treaty Rights, and Aboriginal Rights and Title in the Peace and Friendship. The negotiation process started after the Marshall Decision in 1999.

The Marshall case: In August 1993, Donald Marshall jr., a member of the Membertou band a Mi'kmaw community in Nova Scotia was stopped for fishing in Pomquet Harbour in Antigonish County, Nova Scotia, and his equipment was seized. Marshall caught 210 kilograms of eels, which he sold for \$787.10 and was then charged with fishing without a licence, selling eels without a licence and fishing during a closed season. He claimed he was allowed to catch and sell fish by virtue of a treaty signed with the British Crown. Marshall said he was catching and trading fish just as the Mi'kmaq people had done since Europeans first visited the coast of what is now Nova Scotia in the 16th century.

In September 1999, the Supreme Court of Canada confirmed that Donald Marshall Jr. had a treaty right to catch and sell fish. The Court found that Mi'kmaq and Maliseet people on the East Coast continue to have treaty rights to hunt, fish and gather to earn a moderate livelihood. These rights flow from the Peace and Friendship Treaties signed in 1760 and 1761 between the British Crown and the ancestors of the Mi'kmaq and Maliseet. As the Supreme Court described it, earning a "moderate livelihood" didn't mean an open-ended accumulation of wealth, rather it was securing the "necessaries." Further, the Supreme Court noted that these treaty rights are held by the community as a whole. This is because the treaties were negotiated by groups of Aboriginal peoples, not by individuals.

Our office works on a daily basis to address issues related to the Duty to Consult as well. In 2004 and 2005, the Supreme Court of Canada (SCC) handed down three landmark decisions that found the Crown (provincial and federal) has a duty to consult with Aboriginal peoples regarding decisions or taking actions that might adversely affect their established or potential Aboriginal rights and Treaty rights (Haida and Taku, 2004, Mikisew Cree, 2005). In response, the governments of Nova Scotia and Canada, and the Mi'kmaq have agreed to follow a Consultation Terms of Reference that clearly lays out a process for Crown consultation with the Mi'kmaq. The PROPONENT has no legal duty to consult with the Mi'kmaq. However, where resource based projects or project where impacts to the environment are potential the Province has to consult with the Mi'kmaq. (Especially where the Province issues regulatory permits and licenses). However in many cases the Province will delegate the consultation to the PROPONENT. Since 2004 the Mi'kmaq Rights Initiative has been actively engaged in meaningful and productive consultations with a diverse number of PROPONENTS and in a diverse field of private and public sector developments. With over 100 consultations currently underway many of Nova Scotia's most prominent corporations have become engaged in the consultation process.

7. In the outcome document of the World Conference on Indigenous Peoples (A/RES/69/2), member States committed themselves to "taking, in consultation and cooperation with indigenous peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the Declaration..." (paragraph 7) on the Rights of Indigenous Peoples and that the action plan be developed in consultation with Member States, Indigenous Peoples and the Inter-Agency Support Group on Indigenous Issues.

In relation to the outcome document of the World Conference on Indigenous Peoples, please outline the following:

(i) Has your organization been involved in any state-led measures to implement the UN Declaration on the Rights of Indigenous Peoples? Please provide details on the level of your participation.

No participation

(ii) What are the major successes as well as the remaining obstacles for the implementation of the UN Declaration on the Rights of Indigenous Peoples for the people that organization represents?

As discussed above, a major success is the *Terms of Reference for a Mi'kmaq-Nova Scotia –Canada Consultation Process*.

The Made-in-Nova Scotia process is a huge step: The Made-in-Nova Scotia Process is the forum for the Mi'kmaq, Nova Scotia and Canada to resolve issues related to Mi'kmaq treaty rights, Aboriginal rights, including Aboriginal title, and Mi'kmaq governance. The participants are the Mi'kmaq of Nova Scotia as represented by the Assembly of Nova Scotia Mi'kmaq Chiefs, the provincial government and the federal government. The Process began with the signing of the Umbrella Agreement in June 2002, in which the Parties confirmed their intention to begin a negotiation process to address these issues. On February 23, 2007, the Parties signed the Mi'kmaq-Nova Scotia-Canada Framework Agreement, which outlines procedures that will guide the negotiations and the topics to be covered. The Framework Agreement states that the objectives of the Process are "to create stable and respectful relationships and to reconcile the respective interests of the

Parties through a Mi'kmaq of Nova Scotia Accord that sets out the manner in which the Mi'kmaq of Nova Scotia will exercise constitutionally protected rights respecting land, resources and governance, to the extent the issues are dealt with in the Accord". The three Parties meet monthly at the "Main Table". In addition, the Parties may establish working groups to examine certain issues in more detail and make recommendations back to the Main Table.

- Our office is comprised of the Negotiation team that represents the Assembly, and our technical staff conducts the research.**

We are also working on developing our own citizenship process.

Our largest hurdle is meaningful consultation and negotiation, and ensuring a Nation-to-Nation relationship is present.

(iii) Is your organization involved in the collection and dissemination of disaggregated data or culturally relevant data on indigenous peoples?

The main source for data collection is the Regional Health Survey. Our organization does not participate in this, but another Mi'kmaw organization conducts this work on Nova Scotia Mi'kmaq communities. The First Nations Regional Health Survey (FNRHS, or RHS for short) is the only First Nations - governed, national health survey in Canada. It collects information about on reserve and northern First Nations communities based on both Western and traditional understandings of health and well-being. <http://fnigc.ca/our-work/regional-health-survey/about-rhs.html>

We collect relevant information specific to the communities when different projects are required. For example we conducted a leakage study looking at how people in our communities spend their money, and how the Chief and Councils spend money, to determine how much money leaves the communities.

8. How does your organization implement the UN Declaration on the Rights of Indigenous Peoples at the community level?

The Made-in-Nova Scotia process is about the implementation of self-determination, and self-governance. (Currently we do have self-governance of education with Mi'kmaw Kina'matnewey). <http://kinu.ca>

Under the Made-in-Nova Scotia Process it is about self-determination of our identity (citizenship), and the negotiation of Mi'kmaq Treaty Rights, and Aboriginal Rights and Title. This includes access and control of lands, and cultural protections. Further, the consultation process in Nova Scotia is working to achieve FPIC.

9. Does your organization provide regular or ad hoc capacity-building programmes on indigenous peoples' rights for staff and members of the community, or planned capacity-building activities in this area?

For projects, we ensure community involvement and conduct community engagement session to present on our work and get community feedback. We also

provide newsletters, social media updates, etc. Other work includes focus groups and meetings. We also provide some workshops.

Through the consultation process and through benefit agreements with industry, we work to get education support, training and employment for the Nova Scotia Mi'kmaq.

At our organization, many of the people employed on staff are Nova Scotia Mi'kmaq. Our lead negotiator is Nova Scotia Mi'kmaw and a Commissioner of the Royal Commission of Aboriginal Peoples (RCAP). This team is also composed of a Senior Mi'kmaq Advisor with two other legal representatives. We have 14 other team members, 10 of which are Nova Scotia Mi'kmaw.

In summer, we also employ Mi'kmaw summer interns.

10. Does the United Nations support your organization's work on indigenous peoples' issues?

YES

11. Please provide information of conferences and other meetings organized or supported by your Organization for 2016 and 2017.

The Assembly of Nova Scotia Mi'kmaq Chiefs meet on a monthly basis, normally the third Thursday of every month.

We will be having a Nationhood Conference in 2016-17. The date has not yet been decided. All the elected band councillors and chiefs participate. We invite all the Mi'kmaw organizations (e.g. education, Native Women, family children services and the tribal councils administering programs and services), and all the hereditary members of the Grand Council also attend.

Other meeting events and dates are yet to be decided.