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**Expert Mechanism on the Rights of Indigenous Peoples
Seventh Session, 08 July 2014
Item 5. Continuation of the Study on Access to Justice in the Promotion and
Protection of the Rights of Indigenous Peoples**

Statement submitted by:
Continental Network of Indigenous Women of the Americas
Enlace Continental de Mujeres Indígenas de las Américas (ECMIA)
Dr. Rosalee Gonzalez, Co-Coordinator, ECMIA-North Region

Thank you Mr. Chair and greetings to you, all other Expert members, and our indigenous brothers and sisters present,

I address this body on behalf of 23 national Indigenous Women's organizations in 19 countries, which make up the Continental Network of Indigenous Women of the Americas.

We would like to make the following recommendations on Item 5. Continuation of the Study on Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples

First, we draw your attention to the UNIFEM report on Ancestral Justice and Indigenous Women in the Americas (2008), a report that came out of a continental gathering held in Quito, Ecuador in 2008. During this conference, Indigenous women agreed that the full recognition of indigenous judicial systems imply three things:

- Recognition of *indigenous norms* which are foundational principles established as rights/law
- Recognition of *indigenous authorities* in charge of implementing and registering indigenous rights/law
- Recognition of the *specific jurisdiction* as to whom the indigenous juridical system has power over to subject them to their indigenous rights/laws

Based on our review of EMRIPs study on this theme, we commend the Experts for your work and would like to add the following recommendations to this study:

1. Under Section III. B Recognition of Indigenous Juridical Systems, noting the examples provided in this section to highlight the different levels of recognition afforded to Indigenous Peoples among regions and countries, we take note of the omission of any example to the United States or Canada indigenous judicial systems and make the following observations, which build on Section III, D. 21. The relationship between Indigenous juridical systems and international human rights laws. This report correctly notes the critique that most Indigenous judicial systems are male-dominated; however, worth noting is that some, as in the United States, are modeled after western court systems (civil procedures, etc.).

Argentina: CONAMI
Heaven Maps
Belice: Toledo Maya
Women's Council
Bolivia: CIDOB, ONMGOB
Bartolome Sisa, ONAMIS
Brasil: CONAMI
Red GRUMM, COMB
Canada: FAQ, Paunikavut
Colombia: OHC
Costa Rica: DIACAVIA
Chile: Consejo de Todas las
Tierras, Aukinka Zana
Ecuador: CONAIE
El Salvador: CONIS
Estados Unidos: Red
Xicano Indigeno
Guatemala: CONAVIGUA
Guyana: American Peoples
Association in Guyana
Guyana Francesa: FOAG
Honduras: CONPAH,
CONAMINH
México: CONAMI
Nicaragua: AMICA
Panamá: CONAMUP,
NIS BUNDOR
Paraguay: OPG, FAPI
Perú: CHIRAPAQ,
ONAMAP
Serinam: DIS
Uruguay: CONACHA
Venezuela: Red de Mujeres
Indígenas Wayuu, CONIVE



Therefore, we recommend that this report take note of the distinction between “ancestral courts” rooted in indigenous juridical concepts and those modeled from colonial juridical concepts, which mirror the exact principles of law as western society. The only advantage in this type of legal system is the proximity and physical access to the courts operationalized by members of the same indigenous peoples; however, this does not necessarily imply “indigenous” principles of justice are implemented.

Consequently, we draw your attention to the recent published work of “Walter Echohawk” who invites American Indians to consider adoption of relevant international law, specifically human rights principles as embodied in the Declaration that aim to promote and protect the rights of Indigenous Peoples.

2. Under Section 3.D. The relationship between indigenous juridical systems and international human rights law. No. 21.

I draw your attention to the first of the three points made in this report, which highlights three prominent critiques against indigenous juridical systems. This first point focuses on gender bias that impedes “equal access to justice for women”. As in the case of gender bias, what should be noted is “racial bias”, which is an even greater critique of indigenous judicial systems. The deeper problem concerns jurisdiction, when and if any indigenous judicial system may have the power over a non-indigenous defendant will the proceeding be fair and just?

3. This year we welcome and celebrate the appointment by President Barack Obama of Professor Diane Humetewa, the first Hopi Indigenous Woman appointed, to a federal district court in the United States. Consequently, as noted in this report under Section IV, B.2, 44 Access to Justice Specific Groups, Indigenous Women and Remedies, which recommends that there is a need for the appointment of Indigenous women to the judiciary.

We recommend that this point clearly state, “fundamental to ensuring that the rights of IW are represented in State legal systems is increasing the appointments of Indigenous women to the” indigenous and non-indigenous judicial systems.

Also, building on this point (Section IV, B.2, 44), it is important to note the importance of ensuring Indigenous women are represented in international legal systems by increasing the appointment of Indigenous Women in international arenas where international standards and policy are designed, adopted and monitored, such as the UN Human Rights Council, Treaty Bodies, etc.

Thank you Mr. Chair.

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Panama: CONAMURP,
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