

Sixth session of the Expert Mechanism on the Rights of Indigenous Peoples

Geneva, Switzerland

**Statement by Mr. Paul Kanyinke Sena,
Chairperson of the Permanent Forum on Indigenous Issues**

Agenda item 5: Study on the access to justice in the promotion and protection of rights of indigenous peoples.

9 July 2013

- Mr. Chair, I would like to thank you once again for giving me the opportunity to take the floor during this session on this important topic.
- I would like to start by welcoming the preparation of the report on access to justice in the promotion and protection of the rights of indigenous peoples. I consider that this is a very comprehensive report with a deep analysis of the theme. The Annex of the report contains Advice number 5 of the Expert Mechanism, with excellent recommendations to States, indigenous peoples, international institutions and national human rights institutions to improve the access to justice for indigenous peoples.
- I want to express my appreciation to the Expert Mechanism on the Rights of Indigenous Peoples for extending an invitation to four members of the Permanent Forum to participate at the International Expert Seminar on Access to Justice for Indigenous organized in February 2013 at the Columbia University in the framework of the preparation of the report. Ms. Dalee Sambo, Ms. Valmaine Toki, Chief Edward John and Mr. Alvaro Pop were delighted to participate at the Seminar.

- The topic of access to justice is very important for indigenous peoples. The study explores the normative framework addressing indigenous peoples' right to self determination and other rights related to access to justice, exploring issues of criminal justice in connection with indigenous peoples, as well as specific challenges faced by indigenous woman, youth and persons with disabilities in relation to access to justice.
- The study also explores new forms of truth-seeking, through truth and reconciliation processes, which may be based on indigenous traditions. It includes relevant examples of such processes taking place at the national level.
- The report reviews and consolidates international law and policy relevant to indigenous peoples' access to justice incorporating jurisprudence of the international human rights treaty bodies, relevant United Nations special procedures, particularly the Special Rapporteur on the Rights of Indigenous Peoples the work of the Permanent Forum, regional human rights mechanism, academic scholarship and even domestic law and policy.
- It is my understanding that this report is under discussion during this sixth session of EMRIP and in September 2013 will be presented to the Human Rights Council. In this regard, I would like to provide some constructive comments that I hope can be useful to complement the report, having in mind the work of the PFII in this particular theme.

- We are pleased to note that some of the documents of the Permanent Forum were considered in the preparation of this report, for example, it makes reference to the idea of Ms. Dalee Sambo to develop a voluntary “optional protocol to the Declaration” to seek a more effective remedies at the international level. It also refers to the Report of the Forum on its mission to Bolivia, as well as to a document of the Expert Group Meeting on indigenous children and youth in detention, custody adoption and foster care.

- A few ideas that came to my mind to complement the report are:
 - A. On the chapter on Cultural rights, under remedies, could be added the recent entry into force of the Optional Protocol on Economic, Social and Cultural Rights. This important instrument will allow indigenous peoples to seek remedies at the international level for the respect of their cultural, social and economic rights. (para. 31).

 - B. Another suggestion is to also look into in the possibilities of indigenous peoples to seek remedies in international criminal tribunals such as the International Criminal Court, as well as the use of the principles of universal jurisdiction. In this regard I invite the Expert Mechanism to review the study prepared by Prof. Bartolome Clavero concluded as a member of the Permanent Forum on International Criminal Law and the judicial defense of indigenous peoples’ rights.

- D. On access to justice to specific groups when referring to women, it might add some important data the recently published report titled “Breaking the silence on violence against indigenous girls, adolescents and young women” produced by UNICEF, UNFPA, ILO, UN Woman and the Special Representative of the Secretary-General on Violence against Children. This report was launch in May 2013. (para 63).
- E. On access to justice to specific groups when referring to indigenous persons with disabilities, I would like to suggest the Expert Mechanism to review the recently published study on the situation of indigenous persons with disabilities presented in May 2013. This report contains a specific reference to the issues concerning access to justice for indigenous persons with disabilities. (para 76).
- I hope you find useful these proposals, the Permanent Forum on Indigenous Issues looks forward to keep collaborating with the Expert Mechanisms on the Rights of Indigenous Issues.

Thank you very much

