Seventh session of the Expert Mechanism on the Rights of Indigenous Peoples  
7 to 11 July 2014 
Geneva - United Nations Palais des Nations

Item 5: Continuation of the study on access to justice in the promotion and protection of the rights of indigenous peoples

Statement delivered by Jesse McCormick on behalf of the Deshkaan Ziibing Anishinaabeg, also known as Chippewas of the Thames First Nation.

Thank Mr./Madam Chairperson,

My name is Jesse McCormick. I am a citizen of the Deshkaan Ziibing Anishinaabeg, also known as the Chippewas of the Thames First Nation. We are pleased to present this statement on the study on access to justice in the promotion and protection of the rights of Indigenous Peoples.

Studies such as these provide critical information to States and Indigenous Peoples concerning the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) and the measures that need to be adopted to ensure the protection and promotion of our rights.

We would like to address two points in this submission.

First, we advise the Expert Mechanism of recent challenges faced by our nation associated with regulatory and legislative deficiencies impairing the achievement of the free and informed consent of Chippewas of the Thames First Nation prior to the approval of the Line 9B oil pipeline infrastructure proposed within our territory.

Second, as the Human Rights Council has requested that the follow-up study focus on restorative justice and indigenous juridical systems, particularly as they relate to achieving peace and reconciliation, and access to justice related to indigenous women, children and youth, and persons with disabilities we provide information on the negative effects of the failure of the Canadian government to equitably fund First Nations education and the associated impacts on access to justice.
Line 9B – An Example of Regulatory Barriers to Access to Justice

Chippewas of the Thames First Nation has recently been granted leave to appeal the National Energy Board decision regarding Enbridge’s Line 9B pipeline. Line 9B has been authorized to carry heavy oil through our territory, across our rivers and in the areas where we practice our aboriginal and treaty rights.

The National Energy Board regulates international and interprovincial aspects of the oil, gas and electric utility industries in Canada. Under the National Energy Board Act, the National Energy Board is empowered to independently approve some works as the final decision maker for certain types of applications including the Line 9B pipeline. The Federal Crown relies on the National Energy Board to discharge its duty to consult and accommodate First Nations. First Nations that seek to engage directly with the federal government regarding project applications are often referred to the National Energy Board to participate in their proceedings.

However, when assessing applications from proponents the National Energy Board functions as a quasi-judicial independent federal agency. The quasi-judicial nature of the proceedings prevents First Nations from entering into direct dialogue with the National Energy Board about the application or its effects. First Nations are limited to participating in an expensive, time-constrained, adversarial process in which the federal government has insulated itself from direct dialogue by relying entirely on the National Energy Board to fulfill its obligations. As a result, First Nations are denied meaningful consultation due to the presence of a regulatory bubble around the decision maker. This system prevents meaningful dialogue about the impacts of projects and denies First Nations access to justice by impairing our ability to engage the government in relation to impacts on our territory.

The Chippewas of the Thames First Nation submits that this approach to consultation is inconsistent with the Declaration and the domestic obligations of the State outlined in Canadian law. It is a violation of access to justice because the system which has been implemented effectively frustrates meaningful consultation by failing to permit meaningful dialogue between the government and First Nations. The approvals of infrastructure projects which result from this system are based on inadequate consultation, unjustifiably infringe aboriginal and treaty rights, and impair the ability of First Nations to exercise our right to participate in decision making. We consider this to be an unfortunate example of a system where the façade of consultation is presented but the meaningful dialogue required for adequate consultation is denied.

Chippewas of the Thames First Nation requests that the Expert Mechanism advise the Human Rights Council that one of the barriers impairing Indigenous peoples’ access to justice is the structure of regulatory systems which prevent meaningful dialogue between Indigenous Peoples and States in relation to major infrastructure projects.
Education and Access to Justice

Responsibility without resources is like a fire truck without water. You can have the tools to respond but lack the resources to do so effectively. First Nations education in Canada is chronically underfunded. In general, First Nations schools have inadequate funding for teacher’s salaries, less money than other schools for children’s programs and many lack the appropriate infrastructure to ensure that our children receive a fulfilling education. We have strong communities with capable people who work very hard to promote the education of our children but they often lack the resources to do so effectively.

Articles 4, 15, 17 and 21 of the Declaration all emphasize the importance of the right to education. Chippewas of the Thames First Nation submits that the right to education is intrinsically tied to access to justice. Without educational resources we lack the tools necessary to overcome the socio-economic challenges that face many of our nations and the ability of our citizens to access justice is compromised.

The effective implementation of restorative justice and indigenous juridical systems aimed at achieving peace and reconciliation requires that our people have access to education and are afforded the opportunity to realize their full potential. Education is a key ingredient in effectively developing, implementing and maintaining restorative justice and indigenous juridical systems.

Chippewas of the Thames First Nation invites the Expert Mechanism to reflect on the interconnection between education and effective access to justice and include content referring to the strong links between the right to education and access to justice in your report.

Thank you for the opportunity to present today and we wish you well in your deliberations.