

EMRIP Sixth session

8-12 July 2013

Panel Discussion on the Recommendations of the International Expert Seminar on Access to Justice for Indigenous Peoples, including Truth and Reconciliation Processes

Wednesday, 10 July 2013

10:00 a.m. to 1:00 p.m.

Presentation of Ellen Walker, Human Rights Officer, International Disability Alliance

Introduction

Thank you, Mr. Chair. I am speaking on behalf of the Indigenous Persons with Disabilities Global Network, supported by the International Disability Alliance.

Many thanks to our distinguished Chair, Chief Wilton Littlechild, members of EMRIP, and representatives of indigenous peoples, member States, UN entities and civil society, for the opportunity to present the situation and recommendations of indigenous persons with disabilities, concerning access to justice.

I work for the International Disability Alliance (IDA). IDA is a global umbrella organization, made up of global and regional umbrella organizations that represent persons with disabilities. Our main mission is to promote the UN Convention on the Rights of Persons with Disabilities (the CRPD). With others, IDA was actively involved in the preparations and negotiations of the CRPD, adopted in 2006 just a year before the UN Declaration on the Rights of Indigenous Peoples. IDA works to increase the direct participation of organizations of persons with disabilities in relevant processes at the UN, and we do capacity building. We are a cross-disability organization, meaning that we represent persons with different disabilities.

IDA recognized, however, that it was not giving enough attention to the situation of indigenous persons with disabilities, whose unique voices and situations have been largely left out of both the global disability movement and also the global indigenous movement, and ignored by States and UN entities.

Increasing work on the rights of indigenous persons with disabilities: UN Permanent Forum study E/C.19/2013/6

In May 2012, a side event of the Disability Rights Advocacy Fund, on indigenous persons with disabilities was at the UN Permanent Forum's eleventh session and it in a recommendation of the Permanent Forum to have a study on the situation of indigenous persons with disabilities, with a focus on challenges faced with regard to the full enjoyment in human rights and inclusion in development. This study was to be done by Forum members Myrna Cunningham and Paul Kanyinke Sena, in consultation with indigenous persons with disabilities and their representative organizations. The International Disability Alliance became actively involved in the preparations for this study and we would like to thank both of those Forum members for their support.

Through interviews and an expert meeting, information was gathered for the Forum study. Perhaps not surprisingly, given the historical exclusion of both indigenous peoples and persons with disabilities, access to justice was one of the key issues identified. The other issues identified include: self-determination; participation in decision making and consultation; discrimination (multiple or double discrimination); education, language and culture (including lack of access to sign language); access to health (including issues related to intergenerational trauma); adequate standard of living; living in the community; children (who in some cases are at risk of infanticide); the need for indigenous-led service delivery systems; women; and emergency situations and disaster risk reduction. The study (document number E/C.19/2013/6) is available on the website of the Permanent Forum's twelfth session.

With support from IDA and Disability Rights Advocacy Fund/AusAID, a delegation of indigenous persons with disabilities participated in the Permanent forum twelfth session for the presentation of the study. On Saturday the 18th of May 2013, the group created an indigenous disability caucus at the Forum, which was then warmly welcomed by the Global Caucus, the Forum and its Members. The disability caucus co-presented the study with the Forum Chair, Mr Paul Kanyinke Sena.

Key concepts

The Forum study identifies some key concepts, issues and recommendations.

1. There are today about one billion persons with disabilities globally, and about 80% live in developing countries.
2. The relevant legal framework comprises both the UN Declaration and also the UN Convention on the Rights of Persons with Disabilities, both of which protect and mention indigenous persons with disabilities.
3. It mentions who is meant by the term, *persons with disabilities*. There are two important aspects to this: First, we are not talking about prevention of disability. The issue of prevention of disability was purposely largely left out of the UN Convention on the Rights of Persons with Disabilities, because the Convention applies to *persons with disabilities* (persons who already have a disability). Persons who currently have disabilities are so excluded from societies today, that significantly increased attention is needed. This is an important point, and it is reflected also in the fact that the indigenous disability caucus comprises- naturally- persons who already have disabilities. Their rights must be addressed. Second: The Convention specifies that the term 'persons with disabilities' includes persons with different impairments which, in interaction with barriers in society, result in disability. (Thus- it includes persons with all different types of disabilities. It is necessary address the rights of all and not just some persons with disabilities.) See article 1 of the CRPD.
4. The study discusses perceptions of disability among indigenous peoples.
5. It identifies key issues for indigenous persons with disabilities, already mentioned, and makes a number of conclusions to UN agencies, States, indigenous peoples, representative organizations of persons with disabilities, and others.

Access to justice and recommendations

Access to justice is a serious issue for indigenous persons with disabilities. Because of this, the indigenous persons with disabilities' Forum study was presented to the access to justice seminar by Ms Carol Pollack. We note that some issues concerning indigenous persons with disabilities have been included in the EMRIP report and in the Advice in paragraphs 12 and 15.

The experience of indigenous persons with disabilities with the justice system is often negative, given that the justice system has been designed without consideration of their needs and rights. Indigenous women with disabilities often experience violence including rape and are faced with indifference and inaction, often leading to non-reporting of these cases, or in some instances, to forced marriage.

The EMRIP advice on access to justice mentions indigenous persons with disabilities in paragraphs 12 and 15. Paragraph 12 concerns methodologies to collect data on persons in detention that is disaggregated by disability, and 15 concerns making justice systems accessible to persons with disabilities. We would request the following to be added to supplement these paragraphs, in the final EMRIP advice on access to justice to be presented to the HRC 24th session.

1. States should work to address the often-negative experience of indigenous persons with disabilities with the formal justice system.
2. All relevant stakeholders should ensure that persons with disabilities, including those who might be incarcerated, have access to disability-specific and general health services; ensure that the right to informed consent is respected, and that persons with disabilities are not subjected to forced treatment.
3. Both traditional and State justice systems should be accessible and sensitive to indigenous persons with disabilities, and ensure that deaf indigenous persons may communicate in their sign language, that the premises are accessible, and that information is available in alternative formats.
4. Provide disability awareness training, with rights-based and intercultural approaches, to staff in charge of the administration of justice.
5. Address impunity for violence including rape and increase attention to supporting rape survivors, in consultation with survivors.
6. Increase research on the current overrepresentation of indigenous peoples and persons with disabilities, in particular persons with intellectual or psychosocial disabilities, in correctional institutions and other types of detention centers, often linked to the inaccessibility of justice.
7. Ensure that the justice systems do not deny the right to legal capacity, for instance by guardianship laws. Ensure that indigenous persons with disabilities are allowed and supported, where necessary, to provide evidence in their own cases against someone who has perpetrated against them.
8. The UN Permanent Forum and the EMRIP mechanism should make all of their websites and reports accessible to indigenous persons with disabilities, including by using web accessibility standards (WCAG standards) and by uploading documents in Microsoft Word and not inaccessible PDF format.

Once again, I am grateful for the opportunity to be here and to present these issues and recommendations on behalf of the voices of indigenous persons with disabilities. Unfortunately no one from the Network could attend the EMRIP session.

We hope that the outcome of the World Conference on Indigenous Peoples in 2014, and the post-2015 development agenda, will include and address these and other issues and rights of indigenous persons with disabilities.

Thank you for your attention.