

Item 5
EMRIP Consideration

Indigenous Peoples and Nations Coalition Indian Council of South America

July 8, 2014
High Level Plenary
EMRIP 7th Session
Item 5 Access to Justice
Ambassador Ronald Barnes

Access to justice cannot be just about hearing criminal cases by a penal justice system that does nothing to address the rights of peoples. While this current report includes the concept of Indigenous juridical systems under international law and recognition of Indigenous juridical systems, we cannot move on major issues such as land and territory under the jurisdiction of colonial courts of occupation.

Access to justice must include the question of whether or not an issue is being raised in the proper jurisdiction and if not, the opposing parties must create the proper mechanism to address the violation of the right. For example, the right of peoples must be litigated in a jurisdiction that does not give the colonial power the upper hand; recognizing this is an important step for providing access to justice for Indigenous Peoples in the context of the right to self-determination. In order to address this in a report on Access to Justice, EMRIP should ensure that it can dedicate a full report with appendixes and be able to send this to other bodies of the Human Rights Council of within the United Nations system. EMRIP does not have this mandate. If Indigenous Peoples right to self-determination is not recognized, we cannot address the violation or denial of status between peoples. Right now we hear that particular States are "allowing Indigenous Tribal Courts" but with only a limited scope of jurisdiction. There is no mechanism to address this, unless, we are able to fully utilize the United Nations decolonization system and the factors and principles that were developed for colonial countries and peoples. This is the best practice for addressing such rights. Some of you may think this is pie in the sky.

So, we are very thankful to the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas for recommending that the United Nations decolonization committee receives communication from Alaska, Hawaii, Indigenous Peoples of Canada, Australia and the Great Sioux Nation or the Lokata, Nakota or Dakotas. This recommendation also extends to other Indigenous Peoples to harness so we are working on access.

Participating in decision-making processes is wholly different from consultations where the States hears the concerns then does whatever its heart desires, irrespective of whether or not it is addressing or working to implement the violation of the right to self-determination. I will read paragraph (N) from General Assembly report A/68/284, the report of the Independent Expert on the promotion of a democratic and equitable international order that was delivered to the General Assembly in October of 2013:

The General Assembly may consider revisiting the reality of self-determination in today's world and refer to the Special Committee on Decolonization and/or other United Nations instances communications by indigenous and unrepresented peoples wherever they reside, inter alia, in Alaska, Australia, Canada, Chile, China, the Dakotas, French Polynesia, Hawaii, Kashmir, the Middle East, the Moluccas, New Caledonia, Northern Africa, Sri Lanka and West Papua, with reference to Chapter XI of the Charter of the United Nations. The General Assembly may also consider amending its rules and procedures to allow for the participation of indigenous and non-represented peoples. Meanwhile, the Assembly should urge States to implement the Declaration on the Rights of Indigenous Peoples. It should ensure that indigenous, non-represented peoples, marginalized and disempowered peoples, and peoples under occupation have a genuine opportunity to participate in decision-making processes;

The mandate of EMRIP needs to be broadened in order to be able to give substantive conclusions and recommendations so we can address the violations of the right of peoples.

I thank you Mr./Chair