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**Agenda Item 5: Study on the Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples
July 9th, 2012**

Good afternoon to all delegations. Our custom at the Expert Mechanism has been to hold an International Expert Seminar on the subject of our primary study each year, in order to receive the benefit of input from knowledge holders, academic thinkers and experts in the area. This year, we held the International Expert Seminar on Access to Justice for Indigenous Peoples, including Truth and Reconciliation Processes at Columbia University. We would like to thank the hosts and co-organizers, the Institute for the Study of Human Rights, the International Center for Transitional Justice and the Office of the UN Commissioner for Human Rights. We were particularly pleased to hear from Mr. Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence provide a keynote address. We would like to thank all the speakers of the International Expert Seminar, a few of whom are present here today. We would also like to thank the government of Canada for their financial support of this Seminar.

In resolution 21/24, the Human Rights Council requested the Expert Mechanism to prepare a study on access to justice in the protection and promotion of the rights of Indigenous peoples. This study outlines the right to access to justice as it applies in the Indigenous peoples' context, including analysis of its relationship to Indigenous peoples' rights to self-determination, non-discrimination and culture. It also examines access to justice issues relevant to Indigenous women, children and youth and persons with disabilities, as well as the potential of truth and reconciliation processes to promote Indigenous peoples' access to justice. The Study concludes with Expert Mechanism Advice No. 5.

This Study begins with setting the context of what access to justice means for Indigenous peoples and its significance under international law. In this regard, article 40 of the UN *Declaration on the Rights of Indigenous Peoples* is of particular importance, which provides for "the right to access to and prompt decisions through just and fair procedures" regarding conflict resolution as well as "effective remedies for all infringements of [Indigenous peoples'] individual and collective rights," giving "due consideration to the customs, traditions, rules and legal systems of Indigenous peoples concerned and international human rights."

There are several other articles of the UN *Declaration* of relevance, for prevention of, and redress for, *inter alia*, "deprivation of cultural rights, dispossession of lands, territories and resources and forced assimilation and integration (art. 8, para. 2); redress through effective mechanisms with respect to their cultural, intellectual, religious or

spiritual property taken without their free, prior and informed consent (art. 11, para. 2); just and fair redress where deprived of their means of subsistence and development (art. 20); processes to recognize and adjudicate the rights of indigenous peoples related to their lands, territories and resources (art. 27); right to redress with respect to lands, territories and resources confiscated, taken, occupied, used or damaged without their free, prior and informed consent (art. 28); effective mechanisms for redress in connection with the development, utilization or exploitation of mineral, water or other resources (art. 32, para. 3), the right to develop and maintain their institutional structures, inter alia, and their juridical systems or customs (art. 34); recognition, observance and enforcement of treaties (art. 37); and access to and prompt decisions through procedures and remedies vis-à-vis infringements of indigenous peoples' individual and collective rights (art. 40). Many provisions provide for redress for historical wrongs, for example, article 28." (para. 10 of the Study)

This Study also sets out relevant regional human rights jurisprudence that have led to providing substantive justice for Indigenous peoples, expanding their access points of justice.

Importantly, the Access to Justice Study examines the relationship between access to justice and other rights of Indigenous peoples, in particular, self-determination, non-discrimination and cultural rights. For each of these sets of rights, barriers to access to justice, and remedies to such barriers, are set out. For example, it is noted that Indigenous peoples have faced considerable challenges in obtaining national and international respect for their self-determination due to State fears that such recognition could undermine State authority. One remedy to this is to reference jurisprudence that recognizes the collective legal personality of Indigenous peoples and their communities.

Next, the Study sets out key areas for advancing the right of Indigenous peoples to access to justice. This includes advancing access to justice through national courts; addressing issues related to Indigenous peoples' rights to lands, territories and resources; and addressing administration of criminal justice.

Importantly, the Study examines Indigenous peoples' legal systems. In particular, the Study reviews international and state recognition of Indigenous peoples' justice systems. Further, the Study examined ways in which Indigenous peoples' justice systems can be linked with State justice systems.

Access to justice for specific groups, Indigenous women, Indigenous children and youth and Indigenous persons with disabilities, who are all vulnerable to discrimination, was examined.

The Study also examines historical wrongs and their impact on access to justice facing Indigenous peoples, focusing on the role of truth and reconciliation processes. This was an important discussion that underscored the importance of Indigenous peoples' involvement in such processes.

Finally, Advice No. 5 sets out concrete recommendations in general, as well as recommendations aimed at States, Indigenous peoples, international institutions as well as national human rights institutions, in particular.

I will review the general recommendations set out in Advice No. 5 which are as follows:

1. The United Nations Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy levels, on the protection and promotion of indigenous peoples' right to access to justice. **The implementation of the Declaration should be seen as a framework for reconciliation and as a means of implementing indigenous peoples' access to justice.**

2. Respect for the right to self-determination requires both recognition of indigenous peoples' systems and the need to overcome historic factors and related contemporary factors that negatively affect indigenous peoples in the operation of State systems. At the national and regional levels, strategic litigation, complemented by outreach and advocacy, can help to expand access to justice and protections for other indigenous peoples' rights.

3. Indigenous peoples' understanding of access to justice might differ from that of States, in some cases informed by their own understandings of, and practices associated with, justice. This means that, at the outset, before undertaking activities to respect, promote and protect indigenous peoples' access to justice, **[Thus,] common understandings of the best means to attain access to justice should be sought, in line with indigenous peoples' rights to participate in decision-making affecting them.**

4. Historical injustices contribute to multiple contemporary disadvantages for indigenous peoples, which in turn increase the likelihood of indigenous peoples coming into contact with the justice system. The relationship of indigenous peoples with domestic criminal justice systems cannot, therefore, be considered in isolation from historical factors or the current economic, social and cultural status of indigenous peoples. Moreover, there are other areas of law, including family law, child protection law and civil law that have an impact this relationship. **Solutions include not only reforms to criminal justice systems themselves but also measures addressing the socioeconomic situation of indigenous peoples.** (para. 1-4 of A/HRC/EMRIP/2013/2.)

I would like to close by noting that tomorrow morning we will hold a panel discussion on the International Expert Seminar which will provide another opportunity to discuss the resulting recommendations, conclusion and Advice related to these discussions as set out in the Study.

Hai Hai. (Thank you.)