

ACCESS TO JUSTICE. Agenda Item 5. Expert Mechanism on the Rights of Indigenous Peoples

I am Petuuche Gilbert of Haakuu, Acoma, our home being in occupied America. I am delivering this statement under the auspices of Indigenous World Association, an ECOSOC NGO.

First, bear with my eye sight disability. I am glad to see that the United Nations is taking positive measures to allow for the participation of disabled people. We all need patience and understanding and that is the kind of respect and positive progress we can and must be making together.

INTERVENTION MADE.

For indigenous peoples in the United States essentially there is no access to justice. Under democratic rule it is not where we are prohibited from pursuing our day in court it is we can not win within the existing system of law. Under current framework we are constrained to use national procedures in the pursuit of justice. The rule of law and policy is such that indigenous peoples cannot regain their inherent right of sovereignty and self-determination. Consider that we are called Native Americans and proclaimed to be citizens of the United States, not by our choosing.

United States courts have relied on the twin pillars of conquest and discovery to define us as discovered and conquered peoples. From the 1830s Supreme Court decisions we have been treated as dependent indigenous nations. Our rights as Indian people has been determined to treatment as wards of the government and a whole federal trusteeship relationship has been creatively established. In essence we do not have sole title to our lands, territories and natural resources. The U.S. government rules us and we are in a sense prisoners of American democracy. A whole body of law and policy described in Title 25 United States Code Annotated and Title 25 Code of Federal Regulations dictate our rights to land, territories and natural resources. The courts have even ruled our Native American rights as Indian people can be removed by the plenary power of Congress. Thus, in essence, under the court decisions of the United States we can have no justice when it comes to being sovereign and truly self-determining. Witness what occurred in American history when treaties have been broken, when Indian land rights were taken away by the Dawes Indian Allotment Act of 1872. U.S. citizenship was forced upon indigenous people within the United States during 1924. Then came the Indian Reorganization Act of 1934 which induced many tribal governments to model American style of governance. These are only a few examples in American history how systematically laws and policies were meant to define and limit indigenous peoples rights.

Domestic rule defining Native American lives continued to be asserted to current times. One federal action which is popular with the federal government as a model of allowing federal assistance to Indian tribes is the 1972 Indian Self-determination Act which is used to manage federal Indian programs by tribes themselves. Other actions are taken by the President through Executive Orders. President Obama recent establishment of the White House Council on Native American Affairs essentially reinforces the U. S.' principle of domination. They insist we must only have internal self-determination, which is their attempt to limit the application of UNDRIP to national law so as not to allow true sovereignty and real self-determination for indigenous peoples. These federal actions are done and taken to operate and maintain the federal Indian system of law and policy. It is the Great

White Father in Washington, DC, doing what is best for his children. Even now there is certainly no real free, prior and informed consent. This is a vivid example of continuing colonial domination.

Today we ourselves participate in this domination. We are acculturated to live within this system of majority rule. We are expected to be good citizens, vote and, thus, participate in our demise as being truly self-determining. It is now being framed as participatory democracy. Indigenous peoples subjugated to the rule of law and national policy. This is continuing colonial domination and not neo-colonialism.

We are relegated to use and play by legal and political game rules established to rule us. We can try to win in the state and federal courts but only under domestic domain. But, when federal Indian law is applied we are the losers when it comes to permanent sovereignty over lands, territories and natural resources. The U.S. courts will rule we do not have self-determination as peoples under international law. These courts rely upon precedent court cases to limit and define us, our lives, our land rights, and our human rights. Thus, under these set of rules and policies we cannot achieve the justice we deserve.

What must be done for indigenous peoples to gain their due justice?

As in the words of Lenin--what needs to be done. Professor Montclure Montose said at a Yale sovereignty conference. Law is the problem. Greg Cajete, University of New Mexico professor, went on to add. Education is the problem. Systematic changes must occur. The rights of indigenous peoples have been recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but they must go beyond being considered as aspirational and they must be implemented. Scholarly contributions are being contributed by the Expert Mechanism on the Rights of Indigenous Peoples. It was quite an achievement to open and present discussions on the doctrine of discovery at the Permanent Forum. The studies and recommendations offered by the Permanent Forum, the Special Rapporteur on Indigenous Peoples, and the Expert Mechanism on the Rights of Indigenous Peoples, must all be addressed. The High Level Plenary meeting can be another important step forward, and we, urge it lead toward a World Conference on Indigenous Peoples because the issues of colonization and decolonization must be confronted.

Progress is being made, albeit so slowly, in respecting and achieving the rights of indigenous peoples. It is our challenge and our desire to live in peace and respect but we cannot do until we are truly accepted as peoples within the meaning of indigenous nations with the right of sovereignty and self-determination.