

**Expert Mechanism on the Rights of Indigenous Peoples
Sixth Session, 10 -14 July 2012, United Nations, Geneva
Agenda Item 5: EMRIP Study on the Access to Justice
Intervention by the International Indian Treaty Council in conjunction with the National
Native American Boarding School Healing Coalition
presented by Andrea Carmen, July 10th, 2013**

Thank you Mr. Chairman.

The International Indian Treaty Council thanks the EMRIP for its current Study on Access to Justice in the promotion and protection of the rights of Indigenous Peoples (A/HRC/EMRIP/2013/2). We welcomed the opportunity to have input into this Study, including making written submissions and participating in the preparatory expert group meeting at Columbia University in New York City.

We appreciate the Study's presentation of the framework provided by the UN Declaration on the Rights of Indigenous Peoples for prevention, redress and restitution including the recognition, observance and enforcement of Treaties, and the right to a remedy for human rights violations as affirmed in a wide range of international instruments.

We support the emphasis made in several paragraphs on the guarantee of non-repetition or non-recurrence as an essential element of justice. How can justice be achieved or even sought while the violations in question continue to take place? The guarantee of non-recurrence is a required first step for achieving justice that is too often overlooked by States in their attempts to provide justice and restitution for past violations which are not really past at all.

For example, Treaty violations continue to take place for as long as Treaty lands that were taken unilaterally have not yet been returned. It is not justice if those on one side of the dispute are the sole arbitrators deciding whether violations took place and what form the reparations should take. This has too often been the case in so-called settlements of Treaty violations in the United States where monetary compensation was provided for Treaty lands that were never for sale in the first place. The Lakota and Western Shoshone Nations still refuse to accept monetary settlements provided for illegally appropriated Treaty lands. Nevertheless, the US has decided that these settlements were concluded and justice served, a view not shared by the Indigenous Peoples in question whose consent was not given and who consider that the original violations of their Treaty rights continue to occur on a daily basis.

For this reason IITC requests that EMRIP, in its advice to the Council, call for the establishment of an international process to monitor and provide redress for Treaty violations when processes established unilaterally by States or by both Treaty parties (where such processes exist) are no able to reach a mutually acceptable resolution. While the EMRIP Study notes that access to an

international remedy for Treaty violations was included in the proposed OAS American Declaration on the Rights of Indigenous Peoples in 2012, we would also like to see this provision contained in its advice provided to the Human Rights Council.

Regarding the matter of non-repetition, to highlight another concern that was presented at the Expert Group meeting on behalf of the National Native America Boarding School Healing Coalition, the impacts of the US policy (also carried out by Australia, New Zealand, Canada and other countries) of forced removal of thousands of Indigenous children for the stated purpose of cultural assimilation is not only a past violation for which State responsibility has not been fully acknowledged, at least in the US. Indigenous children in both the US and Canada continue to be removed from their homes and communities at disproportionate rates through state foster care programs. Languages continue to be threatened or lost as a direct result of the ongoing intergenerational legacy of this policy. In this situation, redress, restitution and restorative justice must begin with acceptance of responsibility, opportunity for truth-telling, and the absolute guarantee of non-repetition.

We also strongly agree with the Study's affirmation in paragraph 81 "that victims and their families have the right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate." In both the US and Canada hundreds or thousands of Indigenous children died or disappeared in the Residential and Boarding schools while officially in government and/or church custody. Many have still not been accounted for. These involuntary disappearances continue as ongoing violations as long as the families are not accorded the rights to truth about the fate of their family member or to provide them with respectful, culturally appropriate final resting places.

We close with the recommendation that the EMRIP continue its Study on Access to Justice in order to provide additional advice to the Human Rights Council, with the input of Indigenous Peoples, to define what restorative justice means in these and other examples of ongoing violations with continuing impacts, and what form the processes to achieve justice in these cases should take.

Thank you.