

Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Sixth session
United Nations, Geneva, 8-12 July 2013

Agenda item 5. Study on access to justice in the promotion and protection of the rights of indigenous peoples.

Joint statement submitted by : Leonard Peltier Defense Offense Committee (LPDOC Regional Chapters), Committee in solidarity with Indigenous peoples of the Americas (CSIA-Nitassinan), International Committee on the Rights of Indigenous Peoples (Incomindios), Arbeitskreis Indianer Nordamerikas (AKIN) ; Arbeitsgruppe Indianer und Menschenrechte (AGIM)

Speaker : Edith PATROUILLEAU

Mr Chairperson,

Access to justice intersects with human rights in a number of ways. It is itself a fundamental right as set out in Article 8 of the Universal Declaration of Human Rights: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.". The right to justice for indigenous peoples and individuals is also protected under international law, such as under the *International Covenant on Civil and Political Rights* (ICCPR), the ILO Convention 169 and the Declaration on the rights of Indigenous peoples.

Nevertheless, the historical and ongoing denial of the rights of indigenous peoples and the growing imbalance and inequality affecting the enjoyment of their civil, political, economic, social and cultural rights results in indigenous peoples often being the victims of discrimination and racism in the administration of justice.

States should ensure that specific laws, such as modern anti-terrorist or intelligence measures, are not used in such a way as to violate the human rights of indigenous peoples and, in particular, that they are not used as a means of intimidation in the context of legitimate civil protest or land claims. It is also important to examine all cases relating to imprisoned indigenous human rights defenders in which there is evidence that the trials were politically motivated or procedurally defective.

Mr. Chairperson, let us remind you a clear example of such injustices by citing the case of Leonard Peltier, a worldwide recognized Indigenous Human Rights Defender. If you may remember, this case was examined as an emblematic case at the Expert Seminar on Indigenous Peoples and the Administration of Justice, organized by the Office of the High Commissioner on Human Rights, in Madrid, in november 2003.

Leonard Peltier, a Lakota-Anishinabe, member of the American Indian Movement (AIM) is still arbitrarily incarcerated in the United States after 38 years for a crime he did not commit. Mr. Peltier's personal testimony of the case is recorded in the U.N. Commission on Human Rights' document E/CN.4/1997/NGO/80.

In 1977, Mr. Peltier stood trial in the United States where he was denied due process in violation of the US Constitution and international human rights standards. The trial judge made rulings that made a proper defense impossible. Furthermore, this same judge has consistently refused to hear new evidence supporting Mr. Peltier's innocence, thus skewing his avenues for redress in a severely unfair manner.

We note that for the last 27 years, the US government has consistently conceded that they cannot prove who is guilty

of the crime Mr. Peltier was originally convicted for (see Peltier v. Henman, 997 F.2 at 469). Moreover, the Appellate Court has found that Mr. Peltier might have been acquitted had the FBI not improperly withheld evidence. Yet, a new trial was never granted.

Mr. Peltier is not, and has never been in prison to pay restitution for a crime. Rather, he has been held in prison for vindictive and political reasons. His incarceration and the Reign of terror by the FBI on the Pine Ridge Lakota Reservation, from 1972 to 1976, have functioned as an overall method to silence and inhibit indigenous peoples in the U.S. So far, all domestic remedies to bring justice to Mr. Peltier and to the Lakota people who were victims of the Reign of Terror in the 1970s, have been obstructed by US. Prosecutors and the Federal Bureau of Investigation (FBI).

As Nobel Peace Prize Laureate and UNESCO Goodwill Ambassador for the Culture of Peace, Mrs. Rigoberta Menchu, so eloquently stated : « all over the world the Peltier case is seen as an example of how the justice system deals with Indigenous people – we have been subjected to an unjust justice.[...] We support this cause as a paradigmatic instance of the need to resolve long-standing injustices suffered by indigenous peoples. [...] It is necessary to investigate this case so that the truth can come forward, and so that a healing process for the Indigenous community of North America can begin. We call for this as our commitment to promote the accomplishment of universal justice ».

Special Rapporteur, James Anaya, in his conclusions in his « Report on the situation of indigenous peoples in the United States of America » (document A/HRC/21/47Add.1, 91.), arrived at the same recommendation : « Other measures of reconciliation should include efforts to identify and heal particular sources of open wounds. [...] New or renewed consideration should be given to clemency for Leonard Peltier. »

Truth, justice and reconciliation are needed between Indigenous Peoples and States around the world as stated in the EMRIP study on « Access to justice in the promotion and protection of the rights of Indigenous people ». Freedom for Leonard Peltier, considered by many as the « indigenous peoples' Nelson Mandela » would be an important step in this direction.

To conclude, Mr. Chairperson, we commend the EMRIP study for addressing the theme of justice for Indigenous peoples as it is key to enabling them to fully enjoy the benefits of domestic and international laws. Access to justice is the guarantee to avoid discrimination and racism against Indigenous peoples. It is also a way to affirm the right of self-determination for Indigenous peoples under international law.

We recommend EMRIP should add to the study a paragraph referring to the legal protection of indigenous human rights defenders, such as Leonard Peltier and many others. We also invite the EMRIP to include the subject of « Access to justice in the promotion and protection of the rights of indigenous people » as a permanent item on its agenda.

We would also like to recommend that EMRIP should consider proposing a mechanism under the Permanent Forum for the Rights of Indigenous Peoples to act as third party in the truth and reconciliation commissions related to Indigenous peoples' issues.

Thank you, Mr. Chairperson.