

To: EMRIP Members and Secretariat

From: International Chief Wilton Littlechild

Date: October 4, 2012

Re: Human Rights Council, 21st Session, Geneva, September 18, 2012

Introduction

This is to inform you that I attended the 21st Session of the Human Rights Council (HRC) on September 18th and 19th to present our Expert Mechanism on the Rights of Indigenous Peoples (the Expert Mechanism) 5th Session Report as well as the reports on Languages and Culture, the Follow-up Study on the Right to Participate in Decision-making with a focus on Extractive Industries and the Questionnaires. I participated in the Interactive Dialogue with State members and Special Rapporteur Professor James Anaya. UN Permanent Forum Member Dalee Sambo Dorough also presented the Voluntary Fund report.

Thank you all for honour of representing the Expert Mechanism on this occasion. Attached are my speaking notes. During the Interactive Dialogue, I was very encouraged with the many States who commented positively and/or expressed support for our work and reports.¹ Some states asked specific questions addressed to me and I wanted to share with you, in summary, my responses and closing comments:

“I begin by thanking all those who spoke, especially for the kind remarks to the Expert Mechanism’s reports and studies. Thank you also to all the Panelists on Access to Justice. I would like to comment on the topic, as we have heard about barriers and challenges but also on alternative solutions. As an Indigenous member I want to thank Norway and Sweden for their contributions to the Voluntary Fund as I know it will assist many Indigenous Peoples’ representatives who would not otherwise be able to participate.

On the Access to Justice Panel which we recommended, I was encouraged by the many delegations who commented on traditional justice systems, native court systems and in particular the comments focusing on women. Ironically, we heard courts and their rules can be barriers to access to justice. We heard about selective implementation of court decisions. But at the same time we heard how languages, customary and traditional laws, that is, Indigenous laws can be alternative resolution considerations. How can the Truth and Reconciliation Processes improve access to justice?

If I may, I would like to urge that access to justice be linked with the UN *Declaration on the Rights of Indigenous Peoples* as a framework. Given the great work that was done on the Handbook for Parliamentarians, I believe a similar handbook for the Judiciary would

¹ USA, Argentina, Mexico, European Union, Russia, the Congo, Cuba, Australia, Venezuela, Chile, Canada, Sri Lanka, Denmark, Finland and Guatemala.

be very helpful to inform all Judges and their staff about the UN Declaration as a solution.

On the Secretary General's report on ways and means to promote Indigenous Peoples' participation, the UN may have to proclaim new rules of procedure or mechanisms to improve and to ensure full, direct, meaningful and effective participation. This, too, is about access to justice.

Let me turn now to the States' interventions specifically addressed to the Expert Mechanism. Thank you again to those who specifically commented on our reports, for example on the Guiding Principles on Business and Human Rights, Corporate Social Responsibility, the double disadvantage of Indigenous women and girls, the willingness to consider guaranteed mechanisms for Indigenous peoples' participation in the World Conference. (Chile)

On the specific questions from Australia and Denmark, where, first, Australia stated that, "Australia would be interested to hear your views on how policy makers can overcome the challenges associated with conflicting views within Indigenous communities in relation to extractive industries." In our report (A/HRC/21/55), we believe it is important to consider an internal mechanism within the Indigenous community. I refer to paragraph 16 of Advice No.4 (2012): Indigenous peoples and the right to participate in decision making, with a focus on extractive industries:

16. Indigenous peoples should make clear with whom governments and extractive enterprises should consult and from whom to seek the consent.¹⁰ Where there are conflicting views on the legitimate representatives and/or representative structures of an indigenous people, the group should establish its own appropriate procedures to determine with whom governments and extractive enterprises should consult and/or seek consent. If necessary and desired, indigenous peoples can seek outside, independent assistance, including financial, to determine disputes.

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The state of Denmark "welcomes continued work on this issue and would like further information about the outcome of the discussions on the joint development of guidelines to implement the rights of Indigenous peoples in the context of extractive industries." The three UN mechanisms continue to discuss this important issue, for example, during our joint meetings after the Expert Mechanism's fifth session in July. We plan to collaborate with the Working Group on Business and Human Rights as well, as referenced in paragraph 25 on page 10 of our fifth session report. (A/HRC/21/52):

25. ...The Chairperson-Rapporteur noted the importance of ongoing and future collaboration between the Working Group on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum on Indigenous Issues and the Expert Mechanism to promote the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples in relation to the Guiding Principles on Business and Human Rights.

Denmark, in thanking EMRIP for its report, “fully supports the recommendations therein” and “look forward to the coming thematic study on access to justice.” Then asked, “Could you enlighten me on how the Expert Mechanism will approach it?”

As in previous studies we will design a framework for the study. I should say that we have not had a chance to consult each other yet as Expert members since our proposal. But, we may consider the relevant rights for access to justice and consider what would be most useful for all concerned. This might include identifying the barriers and challenges for access and what might be solutions in dealing with provision or improvement of access. It will be important also to consider traditional and customary Indigenous laws and systems. We may seek a host to partner with us, for example, a University as we did for the languages and culture study. At the earliest opportunity, we will assign a team lead and with the help of our Secretariat, begin the work. Hopefully, this is satisfactory.

Finally, Denmark noted with appreciation the introduction of an interactive dialogue on the UN *Declaration on the Rights of Indigenous Peoples* during the last Expert Mechanism session then asked, “Will the Expert Mechanism continue to include this element, possibly with a new topic at each session?”

We think it was a very helpful and important session indeed. There were some calls for its continuation as noted in paragraph 73 of our fifth session report. In a preliminary discussion, we agreed on its continuation as we found it to be very helpful, in particular, to improving better understanding and better relations.

In conclusion, I thank again all delegations for this opportunity to discuss our reports and thank you to the Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya. I do agree and support his call for consideration of a new model for extractive industries. Thank you to all my colleagues for allowing me to share this podium and I look forward to another year of work as we build towards the World Conference on Indigenous Peoples in 2014. Hai Hai! Thank you.”