

*Report from IHRAAM's participation in the UN Human Rights Council's*  
**Expert Mechanism on the Rights of Indigenous Peoples**  
**– Sixth Session –**  
**Geneva, July 8-12, 2013**

## **Contents**

1. **Introduction** to the EMRIP
2. **Agenda** of the Sixth Session
3. **Summary Overview** of the Sixth Session
4. **Canada's Participation** – statements; interventions about; promotion of the TRC
5. **DOCIP's Participation**
6. **Highlights** of the week's exchanges
7. **Key extracts** from the Report of the Sixth Session
8. **Notes by Agenda Item**
9. **Interventions** re Canada, inc. the IHRAAM intervention
10. **Matters of Concern**

### **1. Introduction**

The five-member EMRIP discussed five areas of interest to Indigenous Peoples and the UN system. These were the upcoming 2014 World Conference on Indigenous Peoples; the UN Declaration on the Rights of Indigenous Peoples; the EMRIP's study on Access to justice in the protection and promotion of the rights of Indigenous Peoples; follow-up to the EMRIP's previous thematic studies; and proposals to the Human Rights Council.

The Expert Mechanism is a Committee of the United Nations Human Rights Council, and it reports to them and makes recommendations to them. The members are: Mr. Albert DETERVILLE (Santa Lucia); Ms. Jannie LASIMBANG (Malaysia); Mr. Wilton LITTLECHILD (Canada); Mr. Danfred TITUS (South Africa); and Mr. Alexey TSYKAREV (Russian Federation).

EMRIP's mandate is to conduct studies on key thematic issues related to Indigenous Peoples' rights and report to the HRC. There is the appearance of under-funding in all their work. Canada is a member of the Human Rights Council.

This Session's Chair was Mr. Wilton Littlechild, Cree. In the EMRIP's report, he is referred to as "International Chief Littlechild."

The EMRIP's report is included below as a pdf, scanned from the report released in Geneva on July 12<sup>th</sup>, 2013.

## 2. **Agenda**

**Item 3:** World Conference on Indigenous Peoples, September 2014

**Item 4:** follow-up to the EMRIP's previous thematic studies and advice

**Item 5:** EMRIP's study on Access to justice in the protection and promotion of the rights of Indigenous Peoples

<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/AccessToJustice.aspx>

**Item 6:** the UN Declaration on the Rights of Indigenous Peoples

**Item 7:** proposals to the Human Rights Council for their consideration

## 3. **Summary Overview**

### **Access to Justice – EMRIP study**

States gave remarks on the study which tended to highlight changes made to their domestic legal systems such as provision of access to culturally sensitive court workers.

Some states, particularly in South America, have instituted and empowered courts which are traditional and Indigenous in terms of functioning, language and authority.

Some Indigenous interventions called for basic human rights to be implemented, such as the presence of an interpreter at detention, sentencing or trial situations, all of which still include the state itself reforming policies and practices.

The use of existing international mechanisms to resolve issues between states and Indigenous Peoples, as seems to be indicated in UNDRIP Article 40, was advocated in the IHRAAM intervention. For example, the Vienna Convention on the Law of Treaties applies to treaties between the Crown and Indigenous Peoples in Canada, the "Numbered Treaties."

International legal issues were raised by Indigenous participants – including treaty violations and the genocidal practice of removal of children - and then followed by equally and oppositely benign recommendations, such as implementation of restorative justice. There are very different ideas about appropriate remedies, reflecting the reality that only a People can themselves accept terms of reconciliation, no matter the advice of experts or organizations.

### **World Conference on Indigenous Peoples \ HLPM**

This subject is an agenda item for the EMRIP July 2014 meeting in Geneva.

EMRIP elevated the Alta, Norway outcome document re. the WCIP to the status of a UN document, by citing it in its study on Access to justice.

Several statements condemned the High Level Plenary Meeting to be known as the World Conference as a sham and remarked on the need for a proper World Conference, which would last at least ten days and offer real opportunity for Indigenous participation and leadership.

An extremely outspoken intervention was given which condemned the HLPM / WCIP and condemned those few Indigenous organizations and individuals who have participated in the Global Coordinating Group and engineered the very limited participation of Indigenous groups in preparations for the HLPM / WCIP. The assertion was that these “puppet governments” and “cooperators” have contributed to creating the appearance that Indigenous Peoples are involved in the WCIP and its outcomes, while in reality it is little more than an opportunity for the states to announce how they have decided to handle Indigenous issues, and the participating organizations do not / cannot represent Indigenous Peoples.

### **UN Declaration on the Rights of Indigenous Peoples**

As at the Permanent Forum in New York in May of this year, lack of implementation of the UNDRIP was the resounding phrase.

Lack of a mechanism to monitor, assist implementation and hear complaints of non-compliance was also often repeated.

#### 4. **Canada's Participation at EMRIP's 6<sup>th</sup> Session**

a) **Canada participated in two items on the agenda**, giving a particularly invested intervention in Item 5, the EMRIP study on Access to justice.

##### **Agenda Item 3, the World Conference of 2014**

- Canada stated briefly that it supports the conference and Indigenous participation in it. It is not one of the three countries which have donated funds to ensure that result, however, and the time for Indigenous participation in the conference is all but passed. The outcome document produced in Alta, Norway in June is considered the final say of Indigenous Peoples in that conference. One might observe the time gap between their participation and the states' preparation for the Conference. Canada remarked that it would study the Alta document and be prepared for September, 2014.

##### **Agenda Item 5, Access to justice in the protection and promotion of the rights of Indigenous Peoples**

- Canada's representative spoke for ten minutes on the subject of **Access to justice** in the protection and promotion of the rights of Indigenous Peoples, but its intervention had no bearing whatsoever on the rights of *Peoples* – only Indigenous individuals. He characterized Canada's approach to justice for Indigenous as "cost-effective for government," and "beneficial to Corrections Canada." The representative, a member of Aboriginal Affairs and Northern Development Canada, mentioned that 60,000 individuals access aboriginal court worker services each year. This shows a statistical involvement with Canada's justice system of one in 28 Indigenous individuals each year – at least among those who use the aboriginal court worker program.

##### **b) Four interventions given by observer delegations focused on Canada.**

##### **Comité de Solidarité avec les Indiens des Amériques, Paris,**

delivered a joint statement and spoke about the ongoing incarceration of Leonard Peltier, whom Canada extradited to the USA in 1976, for a crime he did not commit. The Comité gave its view that there are many Peltiers in the world and that a mechanism could be implemented under the auspices of the

Permanent Forum on Indigenous Issues which would act as a third party in matters of truth or reconciliation between states and Indigenous Peoples.

### **Aktionsgruper Indianer & Menschenrette, Germany,**

delivered an intervention specific to Agenda Item 6, the UNDRIP, and lambasted Canada for its abhorrent indifference to the missing and murdered Indigenous women.

The text is attached below under their English name, “Meeting of European Support Groups for Indigenous Peoples in North America.”

### **IHRAAM**

delivered an intervention specific to the need for Indigenous Peoples’ access to international legal mechanisms, under Agenda Item 5, citing its participation in the Líl’wat petition to the Inter-American Commission on Human Rights, Petition 879-07. The point of the intervention was a recommendation for application of the international legal principle that one party cannot be both the defendant in a legal question and the presiding judge, which is the case every time Indigenous People go to court in, for example, Canada.

The text of the intervention is attached below under “IHRAAM intervention.” It is also available online at:

[http://indigenouspeoplesissues.com/index.php?option=com\\_content&view=article&id=17901:canada-agenda-item-5-study-on-access-to-justice-in-the-promotion-and-protection-of-the-rights-of-indigenous-people-un-emrip-6th-session&catid=22:north-america-indigenous-peoples&Itemid=55](http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=17901:canada-agenda-item-5-study-on-access-to-justice-in-the-promotion-and-protection-of-the-rights-of-indigenous-people-un-emrip-6th-session&catid=22:north-america-indigenous-peoples&Itemid=55)

**Joint Statement of the Grand Council of the Crees** (Eeyou Istchee), Canadian Friends Service Committee (Quakers), Indigenous World Association; Assembly of First Nations; Union of British Columbia Indian Chiefs; Federation of Saskatchewan Indian Nations; First Nations Summit; Chiefs of Ontario; Native Women’s Association of Canada; KAIROS: Canadian Ecumenical Justice Initiatives; First Peoples Human Rights Coalition; International Indian Treaty Council

intervened under **Agenda Item 6:** United Nations Declaration on the Rights of Indigenous Peoples; and **Agenda Item 5:** Access to Justice. The full text is below.

### c) Canada's promotion of its Truth and Reconciliation Commission

For at least the third time this year, **Wilton Littlechild** has used his position as a member of the Expert Mechanism on the Rights of Indigenous Peoples to promote Canada's Truth and Reconciliation Commission (TRC), of which he is **the Chief Commissioner**, at United Nations forums. At the EMRIP session, he presented a lengthy power point on the subject, using it as his introduction to Agenda Item 5, Access to Justice, where it took on the appearance of an example of the kind of Justice the EMRIP is looking for.

No other member of the Expert Mechanism or the Permanent Forum has *ever* used their position as a platform to promote projects or issues in their home state.



*Wilton Littlechild*

In his promotions there are key points which are extremely misleading for anyone unfamiliar with the true character of Canada's TRC. He repeats them at every opportunity, and they are: the assertion that residential school survivors were represented in the signing of the Indian Residential Schools Survivors' Settlement Agreement (IRSSA); that former students shaped the outcome of the Agreement; that Canada paid *reparations* for the IRS legacy; and, by inference, that there is no difference between his Commission (to document personal testimony of crimes done to former students as children, or to their children - a Commission which has no mandate to find fault, or to prosecute those guilty of crimes) and justice in progress.

Littlechild never mentions the modern day rate of apprehension of indigenous children and the placement of those children with non-native families. This violent assimilation, fitting the description of Article 2 of the Genocide Convention, carries on in spite of the Prime Minister's apology to former Indian Residential School students where he promised such a thing would never happen again in Canada.

Littlechild was an informant for the Permanent Forum on Indigenous Issues' study, 2013, titled "Truth Commissions in the American Continents." In the very brief remarks about Canada's TRC, the study says that Canada paid "reparations" for the harms done by residential schools. That is not true at all, because what was paid in the "Common Experience Payments" and the "Individual Assessment Process" was compensation to individuals, based on how many years they spent at a residential school, for "loss of family life and culture," and for "serious physical, sexual, emotional and mental abuses." Reparations, on the other hand, are made to groups of people or countries and are usually associated with the fallout after war. The word "reparations" does not appear in the Indian Residential Schools Survivors' Settlement Agreement, nor in any of the correspondence, documentation or promotion of that Agreement.

While Littlechild always refers to "spiritual life," and the harms to that by Indian Residential Schools, that does not fall within his mandate as a TRC Commissioner, nor will such harms be documented in the TRC's final report.

Littlechild does not balance his promotions of Canada's TRC with any of the glaring contradictions whatsoever: that the Commission has no legal force or power to even subpoena named suspects revealed during its collection of testimony; that the Commission was delayed by almost two years because of the resignation of all three Commissioners who were first appointed; that the budget of \$60 million is hopelessly inadequate, even to complete a single part of the mandate – to open an archive; that the former students had very little awareness of the creation of the AFN's class-action suit – much less participation in development of it; or that the participation of former students in the TRC is going to reach a maximum of perhaps 10% - of 650 First Nation communities, 68 were visited by the TRC and of over 80,000 former students only 6,000 statements are projected to be received by the end of the TRC mandate.

## 5. **DOCIP's Participation**

**DOCIP is a documentation and information center** created in 1978 at the request of the Indigenous delegations participating in the first international conference of non-governmental organizations on Indigenous issues held at the United Nations (Geneva, 1977), which assists Indigenous participants at UN sessions with photocopying, translation services and archival of Indigenous interventions.

At this session, DOCIP provided copies on disk of all the recommendations received by the Permanent Forum on Indigenous Issues and all EMRIP studies.

Each intervention presented during this conference has been uploaded to the internet by DOCIP. Statements made during the EMRIP 6<sup>th</sup> Session can be viewed here:

<http://www.docip.org/gsd/cgi-bin/library?e=d-01000-00---off-0cendocdo--00-1--0-10-0---0---0prompt-10---4-----0-1l--11-en-50---20-about---00-3-1-00-0-0-11-1-OutfZz-8-00&a=d&c=cendocdo&cl=CL2.3.2.6.1.pr>

## 6. Highlights in the week's exchanges

The state of **Vietnam** and the **Council of Indigenous Peoples in Today's Vietnam** exchanged interesting and opposite viewpoints. It has long been Vietnam's position that there are no Indigenous Peoples in Vietnam, but now it recognizes some and not others.

The lead Commissioner of the **Association of Southeastern Asian Nations (ASEAN)**, Rafendi Djamin, presented during an interactive dialogue on implementation of the Declaration on the Rights of Indigenous Peoples (Item 6). He expounded upon what he described as great strides forward in recognition and inclusion of Indigenous Peoples' rights within the **Asian Charter of Human Rights**, and made remarkably strong statements such as, "it is urgent to recognize the collective and not just the individual rights of Indigenous Peoples," and "regional courts will fill the gaps in lack of implementation within states in the Asian international community." He was followed by an **Indigenous participant from Myanmar**, who questioned most of that presentation, saying that there is not even a reference to Indigenous Peoples in the Asian Charter; that violent events in Burma have not been slowed by ASEAN or the Charter; and asking *how* the Human Rights Commission would convince Asian nations to implement the UNDRIP? Mr. Djamin's response was worrying – saying that the UNDRIP is nearly impossible to implement because there is still **a debate raging in most Asian countries** as to whether they agree that there are Indigenous Peoples there, and that maybe those countries should have a vote on that topic first. After that, he suggested, people should "stop quarrelling over territorial integrity because we are going to implement Indigenous Peoples' rights."

**Japan** attended and spoke about developments meant to promote the rights of **Ainu** people on the island of Hokkaido. Two other Indigenous delegations attended from in or around Japan, and Disuki Shurani spoke about the recent conflict between China, Japan and Vietnam over the **Senkaku islands** between them. The Indigenous pointed out that the conflict never considered their use of the islands, which are a **key fishing area for their people**.

Numerous instances of **difference between states' and Indigenous Peoples** representation of the process of implementation of the UNDRIP occurred, especially between such states as **Australia, New Zealand, Canada** and the **USA** and delegations remarking on the aspirations of Indigenous Peoples there. While the States commented on their efforts to integrate Indigenous Peoples within **the economic life of the state** and "close the economic gap," as Australia repeated, the Indigenous speakers remarked on those states' lamentable resistance to the **Indigenous right of self-determination and to their lands, territories and resources**.

**Australia** is apparently pursuing a process of discharging its obligations to Indigenous Peoples which is **very similar to Canada's Aboriginal Horizontal Framework**. Australia referred to a process of reform in the following categories: early childhood, safe communities, health, economic development, safe homes, government and leadership, and schooling. Canada's AHF uses the following seven categories: governance and relationships, lifelong learning, health, lands and resources, housing, economic opportunity, and safe and sustainable communities.

Speakers from all seven regions (North America, Central and South America and the Caribbean, the Pacific, Asia, Africa, the Arctic, and Eastern Europe), spoke of **the very slow pace of implementation of the UNDRIP. Stunning statistics** of poor health, over policing, lack of access to education, food and shelter, violence against women, lack of security or access to legal recourse, structural and institutional discrimination all characterize **Indigenous Peoples' situations around the world**. It was noted that there are overwhelming similarities in the barriers facing Indigenous Peoples in rich countries and poor countries alike.

Strong representation of the **Amazigh people of northern Africa**, sometimes called “Berbers” by others, influenced the meeting. Statistically, these people make up the following percentages of state populations: Morocco – 70%; Algeria – 50%; Tunisia – 20%; Mali – 30%; Niger – 40%; Burkina Faso – 10%; Canary Islands – 40%, Libya – 40%. The people are attempting to unify their drive for self-determination. One of the main forms that lack of recognition of the Amazigh takes is the lack of media attention to their issues, in spite of police intimidation, land use decisions which impact and displace the people, and so on.

One recommendation was made in many ways: that the Human Rights Council must attempt to have an **international court** created which would hear the **complaints of Indigenous Peoples against States**. Presently, Indigenous Peoples cannot get standing in the International Court of Justice where they would ask for international laws to be applied to States. Programs of **reparations** to Indigenous Peoples must be developed.

Comments were made regarding the fact that Indigenous Peoples' **rights cannot be accommodated merely by economic measures**; that States should pursue **legal pluralism** with Indigenous legal systems; that Indigenous rights should be, at a minimum, constitutional within States.

**Pastoralist concerns in Africa** were represented by several speakers. Some African States continue to deny the presence of Indigenous Peoples, saying instead that everyone is Indigenous there. Discrimination against the pastoralist comes in the form of land sales or leases which do not take into consideration the pastoralist presence, and result in **evictions** – 15,000 people in Tanzania alone, and the death of livestock due to forced relocation – 8,000 cattle in Tanzania.

Indigenous Peoples in **conflict zones** continue to be **displaced and suffer violence**. Peoples in areas of **heavy resource extraction**, such as mining and hydro-electric development, are **displaced** on a daily basis.

Many speakers requested a visit by the Special Rapporteur on Indigenous Peoples, including Tanzania, Burkina Faso and Rwanda.

## 7. **Key extracts from EMRIP's Report of their 6<sup>th</sup> Session**

*The full report is available online and next to this report on the IHRAAM website.*

- **Proposal 1 – Continuation of the Access to justice study**

The EMRIP continue its study n Access to justice, “with a focus on restorative justice and Indigenous juridical systems, particularly as they relate to achieving peace and reconciliation,” including access to justice for Indigenous women, children and youth, and persons with disabilities.

- **Proposal 2 – World Conference on Indigenous Peoples**

Supports use of the Alta Outcome document ( <http://wcip2014.org/1530> ) in the WCIP  
Proposes that the Human Rights Council urge states to fund Indigenous participation  
Proposes that the three Indigenous mechanisms (EMRIP, SR, PFII) participate equally

- **Proposal 3 – Implementation of the UNDRIP**

Proposes that the HRC request States to establish, “with the full and effective participation of Indigenous Peoples, independent mechanisms to oversee and to promote the implementation of the rights contained in the UN Declaration, and that these mechanisms be mandated to oversee the implementation of recommendations made by the UN treaty bodies, Special Procedures, the Universal Periodic Review and other mechanisms related to the rights of Indigenous Peoples. Such mechanisms should cooperate closely with regional and national human rights institutions.”

Proposes that HRC encourage the General Assembly to establish means by which Indigenous Peoples can represent themselves as observers at UN meetings, rather than be accredited by organizations or NGOs.

Proposes the UN Voluntary Fund for Indigenous Populations be re-named the “UN Voluntary Fund for Indigenous Peoples.”

Proposes that the term “Indigenous Peoples” be capitalized in UN spelling.

- **Proposal 4 – UN Development Agenda**

Rights of Indigenous Peoples be entrenched in post-2015 UN Development Agenda

- **Proposal 5 – Universal Periodic Review**

The UNDRIP be included in the list of standards on which the UPR process is based

## 8. **Notes by Agenda Item**

### **Under Agenda Item 3, *World Conference on Indigenous Peoples*:**

“I brainstormed with the Expert Mechanism and the Permanent Forum on the World Council, and attended the Alta Conference. The Alta Outcome document has a high level of legitimacy due to the Global Coordinating Group’s organizing. I will refer to Alta in my own work as Special Rapporteur, to guide my work, and I also will encourage civil servants and the private sector to use that document.”

- **James Anaya, Special Rapporteur on Indigenous Peoples**

### **Under Agenda Item 6, *Declaration on the Rights of Indigenous Peoples*:**

“The sovereignty of states can only be strengthened by application of the Declaration (on the Rights of Indigenous Peoples).”

- **James Anaya, Special Rapporteur on Indigenous Peoples**

“When we were developing the UNDRIP, it started to look like a Declaration on the Rights of States. They always want to talk about their territorial integrity: but what about the territorial integrity of Indigenous Peoples?”

- **Chair Wilton Littlechild**

## 9. **Matters of Concern**

### ***Individualization of the Peoples’ Right***

The 6<sup>th</sup> session proceedings, particularly the study on Access to justice, revealed a theme consistent with the general individualization of Indigenous Peoples’ rights shown during the Permanent Forum on Indigenous Issues in May of this year. That is, participants are using the term “Indigenous Peoples” – which is supposed to mean the plural form of groups with a collective identity as *a people*, hence “Peoples,” not “people” as in “individuals” – in the same way that one might use the term “Indigenous People,” meaning any people or individuals.

### ***Shortcomings in the study on Access to Justice***

The study which EMRIP has undertaken is based partly on Article 40 of the UN Declaration on the Rights of Indigenous Peoples:

#### ***Article 40***

**Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.**

This article is clearly referring to issues arising between states and Peoples, and it grounds the theatre for resolution in “international human rights.” Unfortunately, the focus in the EMRIP study on access to justice is almost exclusively trained on Indigenous individuals within states as a sort of ethnic minority which is pursuing equal rights. Dozens of references to “Indigenous Peoples” are phrased in such a way as to be, at best, ambiguous, or, worse, obviously in regard to the rights of Indigenous individuals.

Further, in the small section of the study titled “III. Access to justice under international law,” the organization of the study changes and there are no “barriers” or “remedies” listed, as there are in other sections.

### ***Foundations of the rights of Indigenous Peoples***

On the subject of the source of Indigenous Peoples’ rights, Chair Littlechild repeatedly emphasized his view that the UNDRIP is the normative framework for and the foundation of the human rights of Indigenous Peoples.

If this is the case, Indigenous Peoples still have a very long way to go before they would be able to challenge a state in an international court for restitution, restoration, compensation and reparation from the crimes done them, the irreparable harms, and for the prosecution of the crimes of genocide which Indigenous Peoples have universally been victims of.

If the UNDRIP is the source of Indigenous Peoples’ rights and not, for instance, the Law of Treaties or even Article 1 of the ICCPR and ICESCR, i.e., “All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development,” how can they represent themselves against the states which have usurped their international rights as peoples?