

Intervention on Article 7, Access to Remedy

Submitted through: Indigenous Peoples International Centre for Policy Research and Education – Tebtebba Foundation

Joint with:

- Indigenous Peoples Rights International (IPRI)
- Narasha Community Development Group
- Movement for the Survival of the Ogoni People
- ESCR-Net

The joint statement shall be read, in person, by: Mary Ann Bayang

Mr. Chair,

One of the primary concerns of Indigenous Peoples worldwide in relation to access to remedy, is the lack of effective recognition of their systems of justice by local, regional and national authorities, or the existence of discriminatory attitudes against these systems. We quote the UN Special Rapporteur on the rights of Indigenous Peoples, who said that:

“Without accessible courts or other legal mechanisms through which they can protect their rights recognized under national and international normative instruments, indigenous peoples become vulnerable to actions that threaten their lands, natural resources, cultures, sacred sites and livelihoods. At the same time, recognition of their own justice systems is important to respond to their rights and needs with respect to justice, self-governance and culture. Effective access to justice implies access to both the State legal system and their own systems of justice.

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The ability of indigenous peoples to continue and strengthen their own systems of administration of justice is an integral component of their rights to self-governance, self-determination and access to justice under international human rights instruments.”¹

Therefore, we would like to propose the inclusion of an additional provision after Article 7.1, that would read:

State parties shall respect and recognize indigenous customary laws and justice systems, including, by recognizing this as legal venue for redress, grievances and remedies and ensuring enforcement of their decisions.

To support this proposal, we make reference to the following international and regional instruments and documents:

1. The UN Declaration on the Rights of Indigenous Peoples, specifically Article 4 in relation to right to autonomy or self-government, Article 5 that asserts the right of indigenous peoples to maintain and strengthen their political, legal, economic, social and cultural institutions and Article 34 the right to promote, develop and maintain their

¹ A/HRC/42/37, August 2, 2019 – Report of the Special Rapporteur on the Rights of Indigenous Peoples to the Human Rights Council.

institutional structures, including their juridical systems or customs in accordance with international human rights standards.

2. ILO Convention 169 also provides for the recognition of indigenous justice systems, customary laws and traditional institutions. Specific reference is made to Article 8 and 9 of ILO 169.

3. At the regional level, the American Declaration on the Rights of Indigenous Peoples contains relevant provisions on the law and jurisdiction of indigenous peoples. It provides for the right of indigenous peoples to promote, develop and maintain their institutional structures, distinctive customs, procedures and practices and juridical systems or customs, in accordance with international human rights standards (art. XXII (1)). It also provides that “indigenous law and legal systems shall be recognized and respected by the national, regional and international legal systems” and that indigenous individuals are “entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters” in matters before State jurisdictions (art. XXII (2) and (3)).

4. A/HRC/42/37, August 2, 2019 – Report of the Special Rapporteur on the Rights of Indigenous Peoples to the Human Rights Council on Access to Justice, that elaborates on the right to Indigenous Peoples to their traditional justice systems and institutions.

Finally, we support the proposals of Palestine in Article 7.1 bis and 7.2 to increase transparency in processes of access to remedies.

Thank you Mr. Chair.