

STATEMENT OF THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION

42ND SESSION OF THE HUMAN RIGHTS COUNCIL INTERACTIVE DIALOGUE WITH THE SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

Room XX, Palais des Nations
September 18, 2019
Geneva

Delivered by Julian Fleet, Permanent Observer to the United Nations in Geneva

Mr. President,

The International Development Law Organization (IDLO) welcomes the Special Rapporteur's report on the rights of indigenous peoples and its thematic focus on access to justice for indigenous peoples.

As the Special Rapporteur has highlighted in this and other reports, despite the aspirations of the 2007 *UN Declaration on the Rights of Indigenous Peoples*, many indigenous peoples remain among the most vulnerable and disadvantaged, steeped in poverty and socially marginalized, their voices rarely heard in legal and policy processes and decisions that concern them directly.

The Special Rapporteur's report documents the challenges that indigenous peoples face in seeking and achieving access to justice both in formal state justice systems, as well as through their own indigenous customary systems, which do not always enjoy full recognition.

In its practical and results-oriented approach to the rule of law in countries and at regional and global levels, IDLO works to strengthen access to justice, while being guided by the principle of legal pluralism. We emphasize the value of different legal traditions, including indigenous and other customary systems, but - and this is key - consistent with international human rights norms and standards.

IDLO engages with customary and informal justice through programming and research and was pleased to provide material for the consideration of the Special Rapporteur in the preparation of her report.

Our work reinforces that these systems are an integral pathway to justice, fundamental to the realization of access to justice for all and the development of peaceful and inclusive societies where effective and accountable institutions govern at all levels, as reflected in Agenda 2030 Sustainable Development Goal (SDG) 16.

Recurring estimates show that globally, significant proportions of legal disputes are resolved outside of formal courts, through customary and informal systems. Users of these systems are disproportionately women and marginalized groups — the poor and remote, and minority populations, including indigenous peoples.

IDLO research referenced in the Special Rapporteur's report shows that customary and indigenous systems present certain distinct advantages, including accessibility, affordability, flexibility, speed, and cultural relevancy, which have led to a high level of use and trust within communities, as the Special Rapporteur has noted in paragraph 64 of her report.

However, such systems can have clear disadvantages as well, many of which are rooted in traditional, community or religious values that are at odds with international human rights standards and the rule of law. These may include a lack of procedural safeguards, lack of accountability, entrenched discriminatory practices and far reaching human rights violations. We appreciate that the Special Rapporteur addresses these issues, including in paragraphs 70, 71 and 104 of her report, where she emphasizes that justice mechanisms and institutions have the responsibility to respect, protect and fulfil human rights.

Through programming, IDLO works to strengthen justice systems. In Peru, this has included providing technical assistance and support to indigenous communities and the Peruvian Ministry of Justice and judiciary to facilitate the creation of a model for institutional coordination on intercultural justice. This helped establish interaction between different justice mechanisms and improve the capacity of indigenous leaders and justice professionals to understand and promote respect for plurality as well as human rights.

The Special Rapporteur highlights the need to advance justice for indigenous peoples in relation to Sustainable Development Goal 16 on access to justice for all. Justice provides a concrete pathway to peace and security, human rights and sustainable development. Justice is both an enabler and an outcome of sustainable development for all, including indigenous peoples. This is why the report of the Special Rapporteur is so important.

Mr. President,

Customary and informal justice systems – including indigenous justice systems -- are critical components of the complex journey to justice for many people, but receive insufficient attention from policy makers, practitioners and the international community.

The report makes clear that both indigenous customary justice systems and formal state systems sometimes fail to deliver justice and may conflict with international human rights standards and the rule of law. We would like to ask the Special Rapporteur what factors or conditions she has seen in her experience that can help improve the consistency of indigenous and customary justice systems with international human rights norms and standards. In other words, what factors could help such systems develop, in the words of paragraph 116 of the report, “in a more harmonious direction in accordance with international human rights.”

Thank you, Mr. President.

The International Development Law Organization (IDLO) enables governments and empowers people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.