

Final Report on IHRP Summer 2013 Internship: Lindsay Borrows

From 17 May 2013 until 8 August 2013 I worked as one of five members of the legal support team for the Special Rapporteur on the rights of indigenous peoples, Professor James Anaya, based in Tucson, Arizona. Special Rapporteur Anaya is in the sixth and final year of his mandate and he along with lawyers Leonardo Alvarado and MJ Vuinovich were generous in teaching me about international law, specifically how it works to protect the fundamental human rights of indigenous peoples all over the world. This report will summarize the work I did this summer in the office at the University of Arizona law school, my observations from the sixth annual Expert Mechanism on the Rights of Indigenous Peoples that I attended in Geneva, Switzerland, some reflections on the international legal system and some suggestions for the upcoming country visit to Canada.

Communications Report

A significant part of the mandate of the Special Rapporteur, pursuant to Human Rights Council Resolution 15/14, is to “gather, request, receive and exchange information and communications from all relevant sources” and to “formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples”. Anyone can submit information of alleged human rights violations occurring in indigenous communities. Members of the legal support team review the allegations. If the information is clear, complete, outlines a significant human rights violation, and has not already been acted on by an international body such as the Inter-American Commission, a letter will be written to the government of that country. The purpose of the letters is to open a constructive dialogue, answer questions and provide solutions where international legal standards are not met. As with any type of communication, the process can be time-consuming and delicate as information is verified and the government drafts a response.

My first assignment was to review all previous communications between the Special Rapporteur and governments from mid-summer of 2012 until mid-summer of 2013. I wrote short summaries to provide a snapshot of the situation and what progress has been made in remedying the violations. The high volume of incoming allegations meant the communications report was quite lengthy and required a lot of work to ensure the observations issued by the Special Rapporteur were useful for those trying to help better the situation of the indigenous communities in need. I particularly enjoyed learning how law can be used to negotiate the impacts on indigenous communities and their land from work done by extractive industries. Resource extraction was a large focus of the communications as more companies are expanding their efforts to remote parts of the earth where indigenous peoples live.

Allegation Letters

I worked on drafts of about ten allegation letters during my three months in Arizona. The potential recipient governments included: Argentina, Cambodia, Ecuador, Guam,

Honduras, India, Indonesia, México, Peru and the Philippines. Only two of the letters I drafted were actually sent to during my time in Arizona. Several of the allegation letters had been drafts written much earlier but needed clarification of information. Working in international law I quickly learned to appreciate the process of the work and the joy of learning about different people and places because often I didn't see the outcome of my efforts. Despite the non-binding nature of international law and the sporadic confirmation of 'successful' work, the others in the office were excellent examples of working diligently and hopefully. An analogy that motivated me in the work was that of a gardener scattering seeds. While the seeds may be small, sometimes bigger and beautiful things can eventually grow from them.

On a personal level, one of the most interesting allegation letters was focused on the Huichol/Wixárika from western México. Each year the Huichol make a pilgrimage to a mountainous area in San Luis Potosí. All along their journey they perform ceremonies that keep the world in balance not only for the Huichol but everyone on earth. As part of their sacred ceremonies they collect and use peyote. They have special permission to use this plant despite its classification as a drug. On their way back home from the mountains they were stopped and charged for possession of drugs. The medicine man and those apprenticed to him were put in a drug-trafficking jail with some very serious criminals. It was interesting as we began to consider all of the information because it wasn't entirely clear. The Huichol were in possession of an extremely large amount of peyote and it could have been that there was some illegal use of the drugs, or they could have been under duress, or it may have been the normal amount they retrieve during their annual pilgrimage. We found out a couple of weeks after drafting the allegation letter (before it was sent) that the case had ended, the Huichol were released from prison and all the charges were dropped. Although our particular efforts did not have any direct impact on the release of the Huichol it was still nice to feel part of an international community that was working with indigenous communities, NGOs, individuals and other international bodies to ensure indigenous people were treated respectfully and could live in accordance with their own beliefs and laws.

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

The week of July 8-12 the Expert Mechanism on the Rights of Indigenous Peoples was held in Geneva, Switzerland. The purpose of the conference is to "provide the Human Rights Council with thematic advice, in the form of studies and research, on the rights of Indigenous peoples". In preparation for the conference I wrote about ten memos for the meetings Professor Anaya was to hold in Geneva. It was special to meet the people in Geneva who had sent in the allegations of rights violations and hear in person the stories and questions they had for Professor Anaya. I also found it valuable to see how Professor Anaya conducted the meetings by listening intently and asking particular and practical follow-up questions. I noticed an astute professional intuition with all those I worked with.

During the conference a large amount of time was spent where people (including government representatives, indigenous community leaders, indigenous organizations)

read statements presenting their beliefs about current situations of specific indigenous peoples and what should happen to address any human rights violations. I was impressed with the amount of order there appeared to be with people giving their statements and the large amount of work that went into the drafting of the statements. At the end of the conference a report was adopted.

The legal implications of the conference reminded me a lot of the work we do in the office. Sometimes the recommendations are implemented and make a noticeable difference, other times nothing concrete occurs. However seeds are planted as people work together to attempt an articulation of a law that should be adopted. Tort law suggests there are certain non-contractual duties we owe to our neighbours. Likewise international law suggests there are certain duties countries (or governments) owe to one another, including the indigenous peoples living within their jurisdiction. While certain principles of international law may not be binding it is extremely important. It brings together a global community in pursuit of justice just as we have mechanisms available at a country, state, community, family and individual level.

I found the relationships fostered at the Expert Mechanism were extremely important. I talked to some of the OHCHR interns, whom are indigenous people from across the world that were specially chosen to learn more about international law through a program put on by the United Nations. One of the young men I talked with was from the Awa Nation of Columbia. He said that he feels everyone enters the world with certain gifts. Part of life is to understand and develop those gifts. He said from a young age he knew his was to make a change with law. He has worked hard to learn his tribal law and he didn't know how he would learn another system to make a broader change but then this opportunity with the OHCHR came. We both reflected on how that often happens—through developing our interests and building relationships we find ourselves in places we never imagined. It is difficult to quantify something like the usefulness of EMRIP when the extra-legal implications of relationships that are fostered in an international setting are largely unquantifiable. People literally risk their lives to fight for justice in their communities and in the realm of international law. I think it would be disrespectful to their lives to entirely dismiss the benefits and hope people have invested in international law and its imperfect but developing mechanisms.

Suggestions for Upcoming Country Visit to Canada

Another important part of the mandate of the Special Rapporteur is to carry out country visits. During these visits the Special Rapporteur first meets with the government. In these meetings the government often says what they are currently doing to help ensure adequate protections of human rights amongst the indigenous peoples of the country. Then various communities are visited and an investigation is carried out regarding the status of their human rights. At the end of the visit the Special Rapporteur will hold another conversation with the government and present some findings and a written report is published shortly after.

Canada has been a large focus of the work of the Special Rapporteur since beginning his mandate. The Canadian focus has increased since the inception of the Idle No More movement. The following are a few modest suggestions for how I think the Special Rapporteur could have an even larger impact on his particular country visit to Canada:

- Build on existing initiatives that are indigenous led
 - Part of the uniqueness and success of Idle No More was that it was indigenous led. There are incredible initiatives going on in Canada right now including language revitalization initiatives (immersion schools on reserve, second language learning camps), economic innovation (example: the Mi'kmaq community of Membertou based in Nova Scotia is accredited under ISO 9000), educational initiatives (Simon Fraser University Aboriginal MBA, also Native Indian Teacher Education Program—NITEP, also University of Victoria Indigenous law degree), organizations at a local and national level fighting violence against women (Native Women's Association of Canada—NWAC), treaty groups work, Indian Residential Schools commission (based in Winnipeg, Manitoba). If the SR can maximize on the organizations/efforts regarding indigenous human rights that are already occurring and bring it to light and provide any additional insights into them I think that could be very helpful.
- Pre-site visit phone interviews with select Canadian indigenous experts
 - It could be helpful before visiting to get a sense of the situation from the perspective of 3 or 4 indigenous legal experts that are based in Canada (Sajej Henderson-west prairies, Pam Palmater- atlantic, Douglas Sanderson- east prairies and woodlands, Val Napoleon- west coast)
- Structure of the report
 - I think the structure of the U.S. country report provides a great example of how to tell a legal story in a meaningful way. The reader is introduced first to who the indigenous peoples are. This shows why we should care and situates the rest of the report as the stories and recommendations are connected to people, including the individual reader.
 - There is also a positivity that comes through because of the emphasis on the good that is occurring both internally and externally between indigenous and U.S. governments. A focus on the positive efforts and context makes information more digestible and makes the efforts to overcome the incredible challenges seem more accessible.
- Incorporate a focus on indigenous law
 - Often times indigenous peoples' own laws are left out of discussions in attempts to protect indigenous rights. Culture, language and land dominate the discourse along with the need for Canadian common law to respect each of these aspects of indigenous identity. I think it would be good to emphasize more directly for example that when the forests are destroyed that also affects indigenous law. For example losing a river or a forest is a loss of authority since sites and the stories people tell about the sites hold standards and teachings of how to live and respond to disputes.

- The Truth and Reconciliation Commission is working on a large report to reflect on the residential school experience. In 2008 the Canadian government offered a televised apology for the residential schools. In the TRC report it may be that one of the chapters will focus on indigenous forms of apologies. If the Canadian government had apologized according to indigenous law there would have been more of an understanding and more healing. This would have upheld the constitutional entrenchment of Section 35(1) to affirm and recognize “the existing aboriginal and treaty rights”. One way the SR might help the indigenous peoples of Canada is by paying attention to indigenous laws that are articulated in his visits and present them to the Canadian government as a legitimate way of solving the issues as it also promotes self-determination and other goals as articulated by the U.N. Declaration on the Rights of Indigenous Peoples.
- The media
 - Ensuring the media has access to proceedings during and after the visit will ensure the story is told to a broader audience. A lot of change can come from showing up, listening and sharing the message to others.

Conclusion

Overall I greatly enjoyed my time in Tucson. The desert is a special place for me and it was wonderful to make new connections with people, the land and law over the three months I was there. I’m grateful for the International Human Rights Program at the University of Toronto for providing this opportunity. It has certainly broadened my understanding of what a law career can offer. Most importantly the internship deepened my appreciation for the beauty and resilience of indigenous cultures, lands, languages and laws.