Final RTD IHRAAM Recommendations

##### **International Human Rights Association of American Minorities (IHRAAM)**

##### **Indigenous Peoples and Nations Coalition (IPNC) non-ECOSOC**

August 20, 2021

Comments on the Draft Convention Right to Development

Greetings to the Secretariat and to Ambassador Zamir Akram and Member States and Experts,

##### Recognizing the serious deficiency and lack of development of rights of Indigenous and Tribal Peoples under international law, a state party must be able to recommend a review of obstacles or denial of the right to development by any State, Indigenous Peoples, peoples, or nations that are being denied the right to development under the principles of the right to development and under the Charter of the United Nations and international law. The right to petition for implementation of the right to development with implementable action to address violations of the right to development. The implementation mechanism shall have the right to transmit petition to other United Nations treaty bodies to address or to the appropriate bodies of the United Nations to address the obstacles or violations of the right to development, including to the United Nations decolonization committee and the General Assembly for review. Any recommendation shall not require the consent of the General Assembly, the Decolonization Committee or the Security Council for the admissibility of the Petition to be reviewed by the Decolonization Committee or for the United Nations Security Council or for the General of the right to development. States parties shall

##### Neither States Parties or the implementation mechanism shall place historical limitations on the rights of peoples in connection with the right to development.

The comments on the draft convention concerning Indigenous Peoples reduces the rights of Indigenous Peoples to ILO 169 and to the Declaration on the Rights of Indigenous Peoples unilaterally.

The “Experts” deny the historical right of Indigenous Peoples who are independent historically or have the right to pursue independent due to their historical status or lack of right of an existing State to subsume such nations into their state without their consent.

The Experts were selective in commenting on such historical status on Article 17 of the Draft Convention on the Right to Development.

The following is submitted by the International Human Rights Association of American Minorities (IHRAAM) as paragraph 7 of Article 5 – Relationship with the right to self-determination

**Article 5 – Relationship with the right to self-determination**

7. The implementation mechanism (IM) shall accept and review petitions, based on violations of United Nations General Assembly or Security Council resolutions pursuant to Articles 1, 2, 55, 56, 73, 74, 76 or of any other relevant Articles of the United Nations Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of December 1960 or the Principles which should guide Members in determining whether or not an obligation exists to transmit the formation called for under Article 73 e of the Charter contained in General Assembly resolution 1541 (XV) of December 1960 and its Annex. Such petition shall be accepted from the free political institutions of the peoples concerned from any territory previously listed under Article 73 e of the United Nations Charter or from any Indigenous Peoples or Tribal Peoples or any unrecognized peoples recommending that its case be reviewed by the United Nations Decolonization Committee by a special procedure or mechanism or intergovernmental body of the Human Rights Council or from any State Party. The case shall be reviewed, with invitations from other relevant treaty body experts or mechanisms to address apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to otherwise recognize the fundamental right of peoples to self-determination. The acceptance of the petition shall automatically allow for the admissibility of the petitioner to the appropriate bodies of the United Nations, including to the United |Nations Decolonization Committee for full review and reinstatement to the list of Article 73 e of the Charter of the United Nations or for placement onto the list of Non-Self-Governing Territories. Bearing in mind that the peoples of Non-Self-Governing Territories have the right of territorial integrity in their own right, the United Nations or any State that violate the rights of peoples cannot claim the non-interference or the territorial integrity principle for violating the right of peoples of self-determination.

IHRAAM further recommends the following text for a 3rd paragraph in Article 17 of the draft Convention.

**Article 17 – Indigenous and tribal peoples**

1. Indigenous and tribal peoples have the right to freely pursue their economic, social and cultural development. They have the right to determine and develop priorities and strategies for exercising their right to development.

2. States Parties shall consult and cooperate in good faith with the indigenous and tribal peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

3. The implementation mechanism of the Convention on the Right to Development shall receive petitions from Indigenous and tribal peoples being denied their right to development pursuant to the full scope of Article 5 of the [draft] Convention. [This includes the full scope of recommended paragraph 7 recommended by IHRAAM].

Thank you,

Ambassador Ronald F. Barnes, Indigenous Peoples and Nations Coalition (IPNC) and IHRAAM

**The International Human Rights Association of American Minorities (IHRAAM) makes the following proposal for Article 33 in red:**

**Article 33 – Dispute settlement between States Parties and all peoples**

Any dispute between two or more States Parties with respect to the interpretation or application of the present Convention that has not been settled by negotiation may, upon agreement by the parties to the dispute, be referred to the International Court of Justice for a decision. Indigenous Peoples and all peoples shall participate in public negotiations with diplomatic powers involving settlement of disputes concerning interpretation of their rights in relation to the Declaration on the Granting of Independence of Colonial Countries and Peoples involving settlement of the right of self-determination in all articles pursuant to all articles of the Convention, in particular, for its right of representation from free political institutions to deny the application of puppet entities, including the creation of any organs of the colonial or foreign occupant to reduce the scope and application of its rights as peoples. To ensure a fair settlement concerning these rights, such disputes shall be referred to the International Court of Justice.

Justification: Article 1.2 refers to “the equal right and self-determination of peoples”, in particular, those recognized as Non-Self-Governing Territories or under Article 73 of the United Nations Charter.

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| **China:**  **~~Article 33 – Dispute settlement between States Parties~~**  ~~Any dispute between two or more States Parties with respect to the interpretation or application of the present Convention that has not been settled by negotiation may, upon agreement by the parties to the dispute, be referred to the International Court of Justice for a decision.~~  **Russian Federation:**  **Comment:** Article 33 of the draft proposes to resolve disputes between two or more parties, including by applying to the ICJ. If such an approach is adopted, it will create a potential risk that a significant number of cases related to the obligations of private companies will be sent to the Court. |
| **CINGO:**  (Comment: What happens with the disputes involving other Parties (international organizations)? Is dispute settlement only between States Parties?) |
| **International-Lawyers.Org:**  **Comment:** Although we recognize that it matter that is currently left to the discretion of States as reflected in this article, **we recommend making compulsory the reference to the International Court of Justice, disputes between States that are not resolved within a reasonable period of time**.) IHRAAM supports, with the added text to include rights of peoples, including Indigenous Peoples. |