**Comments by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) on the Human Rights Committee’s Draft General Comment on the right to life (29 September 2017)**

1. The EMRIP welcomes the opportunity to be in a position to comment on the Human Rights Committee’s draft General Comment on the Right to Life, particularly in the context of EMRIP’s new mandate from the Human Rights Council to engage with treaty bodies on follow-up to recommendations (A/HRC/RES/ 33/25)[[1]](#footnote-2).

2. The EMRIP is supportive of many aspects of the draft in particular the clarification on the general conditions that States should address to protect life notably, paras 30., and 65 on the environment (which is of particular importance to indigenous peoples) and the references to the jurisprudence of the inter America system, which has a lot of jurisprudence on indigenous issues. However, it would welcome more references (there is currently only one) to indigenous peoples in these and other paragraphs, as well as references to the Declaration on the Rights of Indigenous Peoples (UNDRIP: the recognized global standard on indigenous peoples’ rights).

3. The EMRIP would wish to make the following suggestions for the benefit of indigenous peoples and the implementation of the UNDRIP.

4. Para. 2: The third line relates to the importance of the right to life for the “individual” and for “society as a whole”. Given the special nature of indigenous peoples “collective right to live in freedom, peace and security” within the terms of article 7 of the UNDRIP, and where each individual right matters to the community, it would be appreciated if the collective dimension of the right to life could be included here. See “Norms and jurisprudence of the Inter-American Human Rights System, 2010, para. 154 on the right to life, which refers to IACHR jurisprudence[[2]](#footnote-3).

5. Para. 3: Second line after the words “individuals”, it would be important to add “peoples” to reflect the right to life of indigenous peoples, as set out in article 7 of the UNDRIP.

6. Para. 5: Either here or in some other part of the text it would be important to refer to States duty to protect the lives and integrity of peoples in voluntary isolation in order to ensure their survival. As expressed by Special Rapporteurs on the situation of human rights and fundamental freedoms of indigenous people and on the rights of indigenous peoples, many of these communities are on the brink of what some describe as genocide, owing to oil exploration, timber extraction, the introduction of vast commercial plantations, infrastructure works, missionary activity, sex trade and human trafficking, drug trafficking, weapons testing, military activities, and international tourism. [[3]](#footnote-4)

8. Para 10: It would be important to refer to the suicide of indigenous peoples, which is a critical issue in many countries like Canada, USA, and Brazil.[[4]](#footnote-5) This is often due to the intergenerational trauma related to removal from their parents, families, homes, and lands, as well as limitations on the use of their indigenous languages, cultural practices and religions. A reference to the Ogoni case[[5]](#footnote-6), of the African Commission on Human and Peoples’ Rights is also suggested, arguing that a combination of targeted killings, pollution and degradation of lands amounted to violation of the right to life.

9. Para. 27: It would be important to add indigenous peoples here as a vulnerable group with references to the cases of the IACHR, including on the massacres of indigenous peoples, e.g. in the case of Plan de Sánchez Massacre v. Guatemala and other cases decided by the IACHR on the right to life of indigenous peoples, as set out in the report at <http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf>
In the middle of this paragraph, it would be useful to mention the importance of the State respecting indigenous customary systems, including through strengthening their communal life and collective forms of organization, that ensure their protection and wellbeing.

10. Para. 30: It would be important to add here the Inter-American Court’s jurisprudence that land deprivation in the context of indigenous peoples entails deprivation of a dignified/decent life (vida digna). See para. 155 of, “Norms and jurisprudence of the Inter-American Human Rights System, 2010.[[6]](#footnote-7) A reference to the Committee’s own general comment no. 23 on article 27 would be useful here[[7]](#footnote-8).

11. Para 33: It could be very useful to have some mention of the deaths in the context of land rights defense, and particularly of eviction orders promoted against indigenous peoples from their own lands (even through precautionary measures). A reference to the cases referred to in the IACHR[[8]](#footnote-9) would support this point, for example the IACHRs report on, “Democracy and Human Rights in Venezuela”. https://www.cidh.oas.org/pdf%20files/VENEZUELA%202009%20ENG.pdf

12. Para 34: While this may not be the best paragraph to add this it would be important to recall the prohibition of removal of indigenous peoples from their territories and the impact on their right to life as set in UNDRIP. A reference to the IACHR report on extractive industries[[9]](#footnote-10) would be helpful in this regard, including the reference to the case of Chitay Nech et al v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.[[10]](#footnote-11)

13. Para 65: It would be good to make a reference to article 29 of the UNDRIP which relates to the protection of the environment as a right for indigenous peoples – in particular given their special relationship to it. The IACHR report on the extractive industry[[11]](#footnote-12) would be a good reference in this regard (in particular para. 60, 88, 123 and 185). It might also be useful to add a reference to the Lubicon Band v. Canada[[12]](#footnote-13) case (167/1984), to illustrate the connection between the right of indigenous peoples’ to engage in their economic way of life, through fishing, animal husbandry etc. (article 27 of the ICCPR) and the right to life, that is often threatened due to environmental contamination by extractive activities. While the Committee did not find a violation of article 6 in this case, it did appear to accept that allegations of a threat to the right to life of the community due to certain development activities could fall under article 6 if sufficiently substantiated.

14. In the section dealing with the relationship between article 6 and other articles, the EMRIP suggests that given the strong connection between article 27 as it relates to indigenous peoples, and their right to life, in particular as it relates to land rights, it would be important to refer to the relationship between article 6 and article 27. Thus, making the link between the way of life of indigenous peoples and their right to life. The Committee’s general comment on article 27 could be referred to e.g para. 9,

“ The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.”

15. Along similar lines the EMRIP would welcome a reference to the relationship between articles 6 and article 1, as it relates to self-determination. The EMRIP makes this suggestion based on the fact that the Committee has introduced the term self-determination in its concluding observations in the context of indigenous peoples (CCPR/C/SWE/CO/7) and makes reference to articles 1 and 6 of the ICCPR in several concluding observations (CCPR/CVEN/CO/4, CCPR/C/CHL/CO/5, CCPR7C/PAN/CO/3), in particular in the context of violence arising around land, as well as the importance of this right to indigenous peoples in itself (article 3 of the UNDRIP) and as a conduit to the expression of all others rights, including their right to life under article 7 of the UNDRIP.

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1. Pursuant to paragraph 2 of Human Rights Council resolution 33/25, “the Expert Mechanism should… (b) Provide Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms.” [↑](#footnote-ref-2)
2. http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf

Para 154. “The life of members of indigenous and tribal communities « fundamentally depends” on the subsistence activities – agriculture, hunting, fishing, gathering ‐ that they carry out in their territories including continued utilization of traditional collective systems that “are in many instances essential to the individual and collective well‐being, and indeed the survival of, indigenous peoples.”

 <http://hrlibrary.umn.edu/iachr/AwasTingnicase.html> and http://hrlibrary.umn.edu/cases/75-02a.html [↑](#footnote-ref-3)
3. Rodolfo Stavenhagen, UN Doc. A/HRC/4/32, 27 February 2007, pars. 42, 48. ! <http://unsr.vtaulicorpuz.org/site/index.php/press-releases/88-report-indigenous-women> and http://unsr.vtaulicorpuz.org/site/index.php/documents/country-reports/154-report-brazil-2016 [↑](#footnote-ref-4)
4. For example : http://unsr.jamesanaya.org/statements/statement-upon-conclusion-of-the-visit-to-canada [↑](#footnote-ref-5)
5. <http://caselaw.ihrda.org/doc/155.96/view/en/#merits>. “These and similar brutalities not only persecuted individuals in Ogoniland but also the whole of the Ogoni community as a whole. They affected the life of the Ogoni society as a whole”… “Given the wide spread violations perpetrated by the Government of Nigeria and by private actors (be it following its clear blessing or not), the most fundamental of all human rights, the right to life, has been violated. [↑](#footnote-ref-6)
6. http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf [↑](#footnote-ref-7)
7. General Comment No. 23, para 3.2. “The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. 2/ This may particularly be true of members of indigenous communities constituting a minority.” [↑](#footnote-ref-8)
8. http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf [↑](#footnote-ref-9)
9. http://oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf [↑](#footnote-ref-10)
10. Judgment of May 25, 2010. Series C No. 212, para. 147. [↑](#footnote-ref-11)
11. http://www.oas.org/es/cidh/informes/pdfs/industriasextractivas2016.pdf [↑](#footnote-ref-12)
12. http://hrlibrary.umn.edu/undocs/session45/167-1984.htm [↑](#footnote-ref-13)