

**Submission from the UN Expert Mechanism on the Rights of Indigenous Peoples**

**Comments on the draft UN Convention on the Right to Development**

**18 August 2020**

The EMRIP appreciates this opportunity to comment on the draft Convention on the Right to Development. It would like to make the following comments and suggestions:

1. **Title of Convention**: In light of the current and future challenges facing humanity, including climate change, the right to development should be sustainable. The EMRIP suggests therefore adding the word "sustainable" in the title of the Convention i.e. the “Convention on the Right to Sustainable Development”. In addition, to highlight and priorities its importance, the EMRIP would also suggest moving the contents of current article 22 on “Sustainable development”, to near the beginning of the Convention.

2. **Article 3 a)** The EMRIP suggests a rewording of this paragraph to include the natural world and the sustainability of development: "To be sustainable, development must be centered on the human person and peoples as well as the natural environment (living and non-living beings). Human beings and the natural environment are the central subjects of sustainable development. They are the active participants and beneficiaries of this development".

3. **Article 4 (2)**. The EMRIP suggests adding the words “design and implementation” here to ensure participation from the conception of development right through to its implementation. “Every human person and all peoples are entitled to active, free and meaningful participation in the design and implementation of development and in the fair distribution of the benefits resulting therefrom.”

4. **Article 5** – The EMRIP is of the view that points 5 and 6 contain contradictions that can lead to misunderstandings and in some cases justify violations of human rights by States. In some countries, speaking out on the autonomy of a region populated by indigenous people is enough to be accused of treason, separatism, and undermining national unity and the territorial integrity of the State. It is difficult to see how the right to self-determination can be affirmed when the mere verbal reference to this right can lead to a long prison sentence in some States. Similar problems arise in militarized indigenous territories, when military forces are considered by indigenous peoples as occupying forces. For the EMRIP, the risk of conflict can only be prevented through respect for the rights of peoples and the individual.

For these reasons, the EMRIP would suggest the following new wording:

Point 5: "States shall take resolute action to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, all forms of aggression, colonialism, domination and occupation, and the refusal to recognize otherwise the fundamental right of peoples to self-determination".

Point 6: “States must take all measures to achieve respect for equal rights and self-determination of peoples and all other human rights, in order to prevent conflict and promote national inclusion and cohesion.”

5. **Article 11**. This article may not protect indigenous peoples at all, especially those living on either side of a border between two States. This is particularly common in Africa, where all borders were established by European colonialism. Under the pretext of protecting the "national" interests of States, there is an incentive to further control and prohibit relations between members of the same indigenous community whose traditional territory is cut-off by State borders. It is also common for indigenous persons having relations with members of their family or community on the other side of the border to be accused of harming the interests of the country or engaging with the intelligence of the other State. This has also led to the spread of corruption through smuggling.

EMRIP therefore proposes that the current article 11 be deleted.

6. **Article 13, 4 (a)** EMRIP is concerned that the use of the term “universal” multilateral trading system implies the sole use of the market and requirement for monetary exchanges. This would exclude other non-monetized modes of exchange, which are still used by some indigenous peoples and other non-indigenous communities. Thus, EMRIP suggests deleting the qualifier "universal”.

7. **Article 17** - The EMRIP notes the references to “Indigenous and tribal peoples”, and suggests removing the term “tribal”, a term subsumed in the term “indigenous”, as recognised by the UNDRIP, the latest instrument and only human rights instrument setting out the minimum human rights standards relating to indigenous peoples. In addition, given that this article directly relates to indigenous peoples, the EMRIP considers it important to refer to the UNDRIP in the text. It suggests the addition of the following at the beginning of point 1, “In accordance with the provisions of the Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to freely pursue.....”

EMRIP notes that point 2 of draft article 17 reproduces article 19 of the UNDRIP on free, prior and informed consent as it relates to legislative and administrative measures. However, there is no reference to the need for free, prior and informed consent in other often more complicated situations such as mining or extractive projects. Thus EMRIP would suggest that you add the following wording from article 32 of the UNDRIP to this article as follows: “States shall consult and cooperate in good faith with the indigenous 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; and prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

8. EMRIP suggests a **new final article** as follows "Nothing in this Convention shall be interpreted so as to infringe the Charter of the United Nations or the principles and international standard-setting instruments relating to the rights of individuals and peoples".

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