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

**Indigenous Peoples and Nations Coalition (IPNC)**

Friday 12 May 2023 Comments and recommendation to the development of an internationally legally binding instrument on the right to development

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The repudiation of the Doctrine of Discovery must be examined and reviewed to determine its impact on the rights of Indigenous Peoples in international standard setting processes. This includes its impact on the denial of the right to development of Indigenous Peoples in the Western Hemisphere and around the world. IHRAAM and IPNC in consultation with others agree that any legally binding instrument must address the violation of our right to development based on the Doctrine of Discovery in association with the Papal Bulls of the Pope and the Vatican. This is crucial for the full development as nations and peoples and States of peoples who can fully operationalize the right to development.

The current draft text and commentaries of the legally binding instrument on the right to development do not take into account the repudiation of the Doctrine of Discovery based on the Papal Bulls decrees of the Pope and the Vatican. A full examination and review are necessary to address the scope and application of rights in the full context of the rights of Indigenous Peoples. This includes the recommendations with the full ability of Indigenous Peoples to address rights under the Law of Nations and international law without limitation of their status. The history and status need to be examined along with the encroachment and discriminating development of colonial law and policy and the foreign occupation of Indigenous peoples and unrecognized peoples who have yet to exercise and to fully realize the full scope of the right of self-determination as peoples. The sacred trust responsibilities and protection against abuses in, inter alia, Articles 1, 2, 55, 56, 73, 74 and 76 of the United Nations Charter and all other applicable provisions of the Charter and international law without limitation of the status of Indigenous Peoples.

Human Rights Council resolution 48/7 must be examined as recommended by the 107th meeting of CERD, stating that there are two ways to realize Indigenous rights – 1. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and 2. Human Rights Council resolution 48/7 the negative impact of legacies of colonialism on the enjoyment of human rights; HRC 48/7 is not included in the examination of the rights of Indigenous Peoples in the draft Convention process. The rights of Indigenous Peoples in the context of General Assembly resolution 1514 based on the Article 73, the Declaration of Non-Self-Governing Territories as it applies to Indigenous Peoples must be examined with a full review of the methods and principles that establish the full range of factors and principles to address the rights of Indigenous Peoples who have the right, or believe they must address their rights under the United Nations Decolonization process and international law.

The recommendations and analysis of the rights of peoples in the exercise of the right of self-determination must not deny the full recognition of the rights of Indigenous Peoples. The rights must consider the ability to address violations of the right to development in the full scope of rights by addressing colonialism and foreign domination and occupation under the United Nations Decolonization process utilizing international human rights and humanitarian law, being fully applicable and without limitation of the ability to fully realize the right of self-determination in accordance with those principles, including proper mechanisms and machinery to realize such rights.

States that violate the rights of peoples in the colonial or foreign occupation context are attempting to derogate from their responsibilities to protect the ‘peoples concerned’ by granting status and rights to their own citizens as if they are a part of the province or jurisdiction. The legally binding instrument must be able to address these violations. The acts of omissions by States must also be addressed in the legally binding instrument on the right to development.

, most often illicitly claiming such status without any check or balance due solely to Power or to seek a reward or through simple blackmail to weaker States that do not feel obligated to uphold the principles of international law. Alaska and Hawaii are perfect examples of the Power brokering or for denying the application of international law principle that would provide protection against abuses of international law responsibilities by other States and human rights or humanitarian law institutions or mechanisms.

Indigenous Peoples studies emanating from the Sub-Commission on Human Rights under the former Commission on Human Rights must also be included in the examination process.

The legally binding international law instruments, including the elaboration of the right to development as a Convention is being developed without taking into account the recent repudiation of the Doctrine of Discovery and other religious and racially discriminating law and policy. This includes the apartheid laws and policy that are recognized as crimes against humanity. The inherent denial of our fundamental rights, including the recognition of our right to self-determination and the premise that we must grant to the white race superior title and status over our territory and resources since we must adhere to “them as a people over whom the superior genius of Europe might claim an ascendency”. The recognized principles developed in law and policy must be accepted and adhered to without consideration in our status with “States” and their superiority over us must be addressed not only in international law instrument but in the further elaboration of international law to grant equal with the equal right and self-determination as peoples.

States continue to assume superior control by denying our right to participate equally exercising diplomatic powers. The tacit acceptance of discriminating law and policy in the development of international law denies our equal right to participate and to defend our interests in international standard setting processes.

Indigenous States, Nations and peoples need to be included in the Conference of Parties in order to ensure our equal participation in the right to development. The section on international treaties and economic agreements cannot be limited to States, as States continue to negate and exclude our rights by limiting and reducing our right to protection against abuses.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law must be listed in the Convention with a Non-Derogation clause:

NON-DEROGATION
Nothing in these Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Principles and Guidelines are without prejudice to special rules of international law as they apply to the right of peoples, including Indigenous Peoples and non-recognized peoples in the full exercise of the right of self-determination of all peoples.

IHRAAM and IPNC will further elaborate on these comments and include text to address the deficiencies in the draft Convention.