

July 18, 2023

Expert Mechanism on the Rights of Indigenous Peoples. 16th Session

Item 5. Interactive Dialogue with the Expert Mechanism on the Right to Development

Statement by Indigenous Peoples Rights International (IPRI)

Dear Chairperson,

Members of the Expert Mechanism,

Indigenous Peoples Rights International highlights the importance of the dialogue between the EMRIP and the Expert Mechanism on the Right to Development (“EMRD”). This is particularly important as it concerns:

- 1) the relationship between self-determination, territorial rights and the right to development and;
- 2) as it relates to the drafting of the Second Revised Text of the Draft Convention on the Right to Development by the Working Group on the Right to Development, and the EMRIP and EMRD’s inputs to that process.

On the connection between indigenous peoples’ lands, territories and resources and the right to development, the preamble to the UNDRIP makes clear that colonization and dispossession of indigenous peoples’ lands, territories and resources have prevented us from exercising our right to development in accordance with our own needs and interests, and that compliance with the Indigenous Peoples’ rights framework is part of the remedy (PP6). That we have the right to determine and control our own economic, social and cultural development is made explicit in common article 1, sub-paragraph (1), of the Covenants, which also explicitly makes the link to lands, territories and resources in its sub-paragraph (2). These rights have been upheld by various UN treaty bodies and regional tribunals and mechanisms.¹

¹ E.g., *Tiina Sanila-Aikio vs. Finland*, CCPR/C/124/D/2668/2015 (2019), para. 6.8 (ICCPR, art. 27, “interpreted in light of the UN Declaration and article 1 of the Covenant, enshrines an inalienable right of indigenous peoples to ‘freely determine their political status and freely pursue their economic, social and cultural development’”).

Article 1(2) is especially important as indigenous peoples are being denied in myriad ways the rights to freely dispose of our natural wealth and resources and be secure in our means of subsistence,² and, in turn, our right to development.³ These violations are usually cumulative, often multiple encroachments on traditional lands over an extended period of time, rather than a single event, and they are normally grounded in denials of our rights more broadly (e.g., to legal personality and to effectively control the full extent of our traditional territories).

We encourage the EMRIP to continue to stress these rights in its interactive dialogues and the EMRD to further engage with Indigenous Peoples directly on these issues through dedicated discussions.

On the draft Convention, IPRI especially welcomes the affirmation of the UNDRIP in its preamble (PP4), including as the UNDRIP reaffirms the right to development (PP6).⁴ The rights in the UNDRIP are declared to be “the minimum standards.” (art. 43). Accordingly, the text of the draft Convention should not fall below the level set in the UNDRIP, including by omitting key rights that are preconditions for the exercise of the right to development. We encourage EMRIP to stress this point in its dialogue with the EMRD and the Working Group as the latter continues to develop the Draft Convention.

We commend the Working Group for its work to date. IPRI fully endorses the general principle set out in draft article 3(f), which provides that “the priorities of development are determined by individuals and peoples as rights holders [and that] ... [t]he right to development and the right to self-determination of peoples are integral to each other and mutually reinforcing.” There is an extensive body of law and practice as well as considerable factual evidence that supports the direct applicability of this principle to Indigenous Peoples, including in the UNDRIP.⁵ We

² See also ICCPR, art. 45, providing that “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”

³ *Indigenous people and their relationship to land. Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur.* UN Doc. E/CN.4/Sub.2/2001/21, para. 49-50 (“... indigenous peoples are being impeded in every conceivable way from proceeding with their own forms of development, consistent with their own values, perspectives and interests. ... Economic development has been largely imposed from outside, with complete disregard for the right of indigenous peoples to participate in the control, implementation and benefits of development”).

⁴ IPRI also acknowledges the reference to the 2016 American Declaration on the Rights of Indigenous Peoples in Preambular Paragraph 10, providing that Indigenous Peoples have the right to decide our own priorities for development “in conformity with their own cosmovision,” and to implement policies, plans, programs, and strategies “in accordance with their political and social organization, norms and procedures, own cosmovisions, and institutions” (art. XXIX(1) and (2)). See also ILO 169, art. 7(1), providing that: “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

⁵ Article 20 provides: “1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress. See also UNDRIP PP 10: “Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and

stress that the ‘right to regulate’ that is vested in States in article 3(h) of the Draft Convention must be tempered and understood accordingly, requiring full respect for indigenous self-determination, autonomy, self-government, and jurisdiction.⁶ This requires that indigenous institutions and legal systems are also respected, and their independence is guaranteed.⁷

Turning to draft Article 17 on Indigenous Peoples, IPRI again commends the Working Group for drawing inspiration from the UNDRIP. Our concerns relate mostly to sub-paragraph (1), primarily because it is lacking a reference to Indigenous Peoples’ rights to lands, territories and resources. As the Committee on Economic, Social and Cultural Rights observed recently, “Indigenous peoples can only freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends if they have land or territory in which they can exercise their self-determination.” This relationship to Indigenous territorial rights needs to be made explicit in draft Article 17 as do the corresponding obligations of States to fully recognize, secure and protect those rights.⁸

Thank you.

strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.”

⁶ See e.g., *Anne Nourgam v. Finland*, CERD/C/106/D/59/2016 (2022), para. 9.12 (referring to judicial oversight by state courts of the operations of indigenous institutions and emphasizing that “when adjudicating on the rights of indigenous peoples ... domestic courts, however, have to pay due regard to the right to self-determination of indigenous communities...”); and *Indigenous justice systems and harmonisation with the ordinary justice system*, A/HRC/42/37, 02 August 2019, para. 74 (“... giving State authorities the primary responsibility for ensuring the integrity of indigenous justice actors risks undermining the autonomy of the indigenous system”).

⁷ *Yaku Pérez Guartambel v. Ecuador*, CERD/C/106/D/61/2017 (2022).

⁸ *Klemetti Käkkäläjärvi et al. v. Finland*, CCPR/C/124/D/2950/2017, para. 9.8; *General Commentation No. 39 on the Rights of indigenous Women and Girls*, CEDAW/C/GC/39 (2022), para. 57(b) (calling on states parties to “Recognize legally the right to self-determination and the existence and rights of Indigenous Peoples to their lands, territories, and natural resources in treaties, constitutions, and laws at the national level”); and *Indigenous Communities of the Lhaka Honhat Association v. Argentina*, Ser C No. 400 (2020), para. 153 (“the adequate guarantee of communal property does not entail merely its nominal recognition but includes observance and respect for the autonomy and self-determination of the indigenous communities over their territory”).