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

Tuesday 27 October 2020

Ambassador Ronald F. Barnes,

The Articles 5, 6, 7 are directly related to text on the “scope” in Article 3 and “access to justice” in Article 4. The recommendation of text is to broaden the scope of this instrument as it applies to protecting peoples and other States from exploitation from transnational corporations in concert with other States. The recommended text is a response to States and their transnational corporations that make international agreements without the participation or consent of the Indigenous Peoples or local population. There are also instances where puppet governments or individuals participate in agreements without the knowledge of the local peoples concerned.

The recommended text is in blue:

Article 3. Scope

1.Unless stated otherwise, this (Legally Binding Instrument) shall apply to all business enterprises, including but not limited to transnational corporations and other business enterprises that undertake business activities of a transnational character and with States that create agreements without the consent of peoples in other States.

2.Notwithstanding Art 3.1 above, when imposing prevention obligations on business enterprises under this (Legally Binding Instrument), State Parties may establish in their law, a non-discriminatory basis to differentiate how business enterprises discharge these obligations commensurate with their size, sector, operational context and the severity of impacts on human rights. **RFB This non-compulsory text gives the “State Parties” the option to design their own measure of impunity so they can derogate from and circumvent any human rights obligation, in the name of applying “national security”, or other false justification to escape their human rights obligations and to deny transparency. States tend not to intervene giving the green light of impunity for the powerful for fear of retaliation. This negates any form of accountability.**  This section should be strengthened or deleted. Some States will grant itself impunity.

The recommended text is in blue:

3.This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms emanating from the Universal Declaration of Human Rights, any core international human rights treaty**, international humanitarian law** and peoples under colonialism and foreign occupation and fundamental ILO convention to which a state is a party, and customary international law.

The recommended text is in blue:

**Article 5. Protection of Victims**

1. State Parties shall protect **all** victims**, including the right of peoples under colonial or foreign occupation** and (delete or) their representatives, families and witnesses from any unlawful interference with their human rights and fundamental freedoms, including prior, during and after they have instituted any proceedings to seek access to effective remedy.

IHRAAM asserts that “peoples” have not been afforded the “sacred trust obligations” of States or their “protection against abuses” in defense of their rights.

There must be a distinction between puppet governments or individuals who consent on behalf of peoples or populations or communities without the knowledge or consent. Such agreements are not permissible under international law.

For Article 7 IHRAAM recommends the following text in blue:

**Article 7. Access to Remedy**

1.States Parties shall provide their courts and State-based non-judicial mechanisms, with the necessary jurisdiction in accordance with this (Legally Binding Instrument) to enable victims ́ access to adequate, timely and effective remedy.

1 bis Peoples under colonialism and foreign occupation have the right to request an international court of competent jurisdiction to address the violation of their right of peoples to self-determination.

In Article 6 IHRAAM would like to add a full paragraph 8:

8. States shall make public all international agreements between States and transnational corporations that impact peoples and the civilian population of the States effected by such agreements. The peoples and local governments must be fully informed and given the right to deny exploitation that causes irreparable harm to the environment, economy and right to subsistence. In no case may a people be denied their right to subsistence.

Thank you Mr. Chair