

STATEMENT OF INTERNATIONAL INDIAN TREATY COUNCIL

On Articles 7 and 13

Open-ended intergovernmental working group for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights

16 October 2018, Geneva, Switzerland

Thank you Mr.Chair. This statement is made on behalf of the International Indian Treaty Council, the Indigenous Peoples' Centre for Policy Research and Education, and the Mainyoto Pastoralists Integrated Development Organization.

IITC represents numerous indigenous peoples from 5 regions of the world and has addressed abuses of human rights by TNCs including, but not limited to, impacts of extractive industries, toxic chemicals, pesticides, and the sale and auction of sacred items for years.

We will address Article 7 – Applicable law and Article 13 – Consistency with International Law, after some general comments.

We agree that prevention of human rights abuses should be the heart of the treaty. However, none of the rights elaborated in the UN Declaration on the Rights of Indigenous Peoples are mentioned in the zero draft. Since the first session of the UN Forum on Business and Human Rights, there has been consensus that Indigenous peoples worldwide suffer the greatest human rights abuses by transnational corporations and business enterprises. We recommend that this Declaration be added to the List of Documents consulted for the preparation of this treaty.

Additionally, in recent country reviews the CERD committee has made recommendations regarding the effects of activities of transnational corporations registered in the United States (2014) and Canada (2017) on indigenous peoples abroad. We recommend that CERD General Recommendation No. 23 on the Rights of Indigenous peoples be added to the list of documents consulted.

Article 7 fails to recognize Indigenous laws and customs. **Article 11 of the UNDRIP** addresses situations of redress developed with Indigenous peoples where property was taken in violation of their laws, traditions and customs.

States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

In Article 13.1 there is little recognition of Indigenous peoples whose territories have been divided by arbitrary state colonial borders. **Article 36 of the UNDRIP** addresses rights of Indigenous peoples separated by borders.

Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

We will address other rights contained in as we address other Articles of the Zero Draft.

Thank you.