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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

IHRAAM's endorsement of the Report of the Independent Expert on the promotion of a democratic and equitable international order

As an international NGO in consultative status with the UN, and specializing in the human rights of minorities, indigenous peoples, and unrepresented peoples and nations, IHRAAM wishes to express its strong endorsement of the Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, UN Doc A/HRC/24/38, which focuses, as provided for in Resolution 21/9 on the right to participation in local and global decision-making, a right that belongs to States, whether rich or poor, and to all peoples, including minorities, indigenous, unrepresented peoples and peoples under occupation.

In particular IHRAAM endorses the Independent Expert's recommendations that the Human Rights Council should resume consideration of self-determination as part of Items 3 and 4 of its Agenda, and that the Council should recommend to the General Assembly to bring specific legal questions concerning self-determination, inter alia, to the International Court of Justice for Advisory Opinion, and its proposal for establishing a World Court for Human Rights. We respectfully recommend providing access to this World Court for Human Rights by Indigenous Nations recognized by the United Nations as full-fledged Applicants.

"The fundamental, collective human right to self-determination is arguably the cornerstone of the entire international legal order." Indeed, it is widely viewed as that primary right of peoples from which all others derive, and hence its central place in Article 1 of both Covenants of the International Bill of Rights. The scope and purpose of self-determination has evolved significantly in the 20th century, leading to successful secessionist movements during and after WWI, WWII, laying the groundwork for decolonization in the 1960s.

Contemporary notions of self-determination usually distinguish between "internal" and "external" self-determination, suggesting that "self-determination" exists on a spectrum. Internal self-determination may refer to various political and social rights; by contrast, external self-determination refers to full legal independence/secession for the given 'people' from the larger politico-legal state.

In short, there is not only a deepening global acceptance of the rights of peoples, but also a willingness to make changes within states and to the existing state system with a view to extending to non-dominant groups the institutional means to democratically and more directly address their rights and needs. Despite this positive progression, the need for access to appropriate international legal mechanisms and fora for addressing and resolving self-determination related disputes has been put on the UN back burner.

There are several thousand ethnic groups living within 193 sovereign states, a large number of whose borders were determined by colonial powers, knowingly or irrespective of their swallowing or separating diverse national groups. This has led to the creation of national minorities, the entrapment of indigenous peoples and nationalities, as well as denial of pre-existing sovereignty over lands and resources. When such multinational states ignore the unique situation, needs and rights of these groups living within the state's borders, and instead impose state or dominant group interests by means of majority-controlled governments, institutions, laws or force, internal peoples are disempowered. This leads to and is reflected in their disproportionately lower standing in social well being indicators, and higher rates of criminalization, poverty, and ill-health – a clear demonstration that the problem is collective and group-related. Whether due to lesser numbers or state legal prohibition, they are unable to utilize democratic means (inter alia, elections) to impact the

formulation of social policy and passing of laws to address their collective developmental needs. As a result, many internal groups come to view their universally proclaimed right to democracy as flowing from and dependent on achieving their right of self-determination – their ability to craft social policy and law to pursue their self-interest. When demands for exercise of the right of self-determination are denied rather than negotiated, conflicts arise that frequently threaten not only the stability of the state concerned, but entire regions.

Post-colonial military occupations have resulted in even greater threats to peace, as evidenced in the egregious situations of unrepresented peoples and nations, particularly those suffering ongoing foreign occupations, of which Palestine and Kashmir are classic instances. These conflicts involve exacerbated human rights violations, war crimes and crimes against humanity, with the peoples concerned facing torture, mass disappearances, extra-judicial killings, and genocide. Such conflicts pose a significant threat of regional if not global conflagration and demand active and pro-active international engagement.

In an effort to spur the UN to address the pernicious impact of the denial of the right of self-determination on world peace, IHRAAM sponsored a three-day International Conference held in Geneva in the year 2000, titled *The First International Conference on the Right to Self-determination the United Nations*. Representatives of a multitude of groups from impacted minorities, peoples and unrepresented nations were in attendance: African Americans, Burmese Mon, Dalits, Gullah-Geechees, Irish, Kanaka Maoli, Kashmiris, Khmer Krom, Mohawks, Puerto Ricans, Saami, Sahrawis, Scots, Sikhs, Tamils, Thlingit, and Zanzibaris. Eminent speakers included Erica-Irene A. Daes, Special Rapporteur of the UN Sub-Commission on Human Rights and former Chairperson of the Working Group on Indigenous Populations which drafted the UN Declaration on the Rights of Indigenous Peoples; Andre Frankovits, Executive Director of the Human Rights Council of Australia; Françoise Jane Hampson, expert with the UN Sub-Commission and University of Essex professor teaching the law of armed conflicts; Joseph v. Komlossy, Vice President of the Federal Union of European Nationalities (FUEN), Dr. Hans Koechler, former member of the Council of Europe's Expert Group on Democratic Citizenship and Chair of International Progress Organization; George Reid, Deputy Presiding Officer of the Scottish Parliament, and Daniel Turp, Canadian MP and Bloc Québécois Critic for Intergovernmental Affairs, as well as noted academics and popular leaders.

As current Special Rapporteur on Palestine, Richard Falk, pointed out in his Preface to the Conference proceedings published in 2001:

At stake is whether the criteria relied upon to clarify the right of self-determination are to be determined in a top-down manner through the mechanisms of statism and geopolitics or by a bottom-up approach that exhibits the vitality and potency of emergent trends favoring the extension of democratic practices and the deepening of human rights.

Falk further noted:

Can any serious student of history doubt that the logic of democratic governance and the realization of a human rights ethos depends on implementing the right of self-determination whenever a “people” is entrapped within oppressive circumstance and clearly manifest the will to exercise freedom over their own destiny.

UN Special Rapporteur Erica-Irene Daes pointed out:

Nowadays, it is almost impossible to deny that the right to self-determination has attained true legal status consistent with a realistic interpretation of the practice of the political organs of the United Nations.

The IHRAAM 2000 Geneva Conference Final Resolutions called for establishing a High Commissioner for Self-Determination, and to create a Commission of Self-determination,

viewed by Falk as “a credible way of bringing greater fairness into the process of responding to claims associated with collective as opposed to individual human rights.”

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) marked a deepening of democratic process in the creation of UN instruments. As Daes saw it:

No other United Nations human rights instrument was prepared with so much direct involvement and active and constructive participation of its intended beneficiaries

UNDRIP nonetheless failed to provide for any mechanism which might adjudicate, within the framework of international law, conflicts between indigenous peoples and states presently exercising contestable jurisdiction over indigenous lands, resources and social policy. The need for such a dispute resolution mechanism was voiced at the 2013 Permanent Forum on Indigenous issues.

Where is the recourse for national minorities, indigenous peoples, and unrepresented and occupied peoples and nations, when they have no way to directly petition the International Court of Justice, and regional courts or monitoring bodies sidestep complaints related to self-determination? Where are the mechanisms that enable juridical or proactive response to self-determination claims with a view to addressing root causes rather than the crimes resulting from their suppression?

The UN system cannot remain unresponsive as worldwide these groups face violent assault or no less criminal nonviolent destruction by states which seek to force their assimilation through the creation of conditions and laws leading to their institutional disempowerment and collective disappearance.

IHRAAM commends Independent Expert Alfred de Zayas for seeking to return UN attention to the primary black letter international law that governs the right of peoples to self-determination, and to the need for studies, hearings, proactive processes and judicial review in support of that right.
