**Special Rapporteur on the right to development**

***Comments and suggestions regarding the “Second revised text of the draft convention on the right to development”, A/HRC/WG.2/24/2***

12 May 2023

The United Nations Special Rapporteur on the right to development welcomes the opportunity to provide comments and suggestions regarding the “Second revised text of the draft convention on the right to development” (Draft Convention). Since the Special Rapporteur, Mr. Surya Deva, took up his functions only on 1 May 2023 and text of the Draft Convention is at an advance stage of negotiation, the comments and suggestions below are constrained by these two factors.

**General comments**

1. I fully support the current process to legalise the right to development at the international level as a critical pathway to promote and realise this right. Such legalisation will have an important “signalling” effect about the status of the right to development vis-à-vis other human rights enumerated in the Universal Declaration of Human Rights and other international human rights conventions. The Convention, once adopted, should also have a cascading effect on the evolution of laws, policies and programmes to implement the right to development at local, national and regional levels.
2. Although there are certain areas for improvement, the current text of the Draft Convention is generally good. Therefore, I would like to take this opportunity to congratulate the Chair-Rapporteur Ambassador Akram as well as the members of the Drafting Group for all their hard work and for adopting an inclusive, consultative and evidence-based approach in the drafting process.
3. Considering the principles of the universality, inalienability, indivisibility, interdependence and interrelatedness of all human rights, the Draft Convention should keep in mind the broader context of other treaty negotiation processes in the human rights and other related fields having a bearing on the right to development. The following illustrative examples should suffice to support this point:
4. An Open-ended Intergovernmental Working Group is negotiating an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises.[[1]](#footnote-1)
5. An Open-ended Intergovernmental Working Group is elaborating the content of an international regulatory framework to deal with human rights violations and abuses relating to the activities of private military and security companies.[[2]](#footnote-2)
6. An Intergovernmental Negotiating Committee is developing an international legally binding instrument on plastic pollution, including in the marine environment.[[3]](#footnote-3)
7. There are agreed outcomes of the annual Conference of the Parties (COP) to review the implementation of the United Nations Framework Convention on Climate Change. For instance, COP27 resulted in an agreement to establish a dedicated fund for “loss and damage” for vulnerable countries hit hard by floods, droughts and other climate disasters.[[4]](#footnote-4)
8. Therefore, both “inside out” and “outside in” approaches will be critical for the effective realisation of the right to development. The former will require integration of the right to development in other parallel treaty negotiation processes and policy agendas, whereas the latter will entail the Draft Convention making full use of entry points offered by other work-in progress instruments. To illustrate, the Draft Convention should consider integrating the requirement of business enterprises conducting human rights due diligence – the new common currency for businesses to manage risks to people and the planet – to ensure that their operations do not undermine the right to development.

**Specific suggestions**

1. The Preamble should acknowledge the critical role of businesses in realising the right to development as well as risks to the right related to unsustainable or irresponsible business activities.
2. The Preamble should also recognise the importance of an affordable and equitable access to technologies to realise the right to development as well as how new technologies, if not properly regulated, might disrupt the enjoyment of this right.
3. Since an effective remedy for breach of all human rights is critical, it will be desirable for Article 1 to include this element as one of the objectives of the Draft Convention. Moreover, access to remedy elements in relation to the violation of the right to development should be strengthened, by either adding a new article or including it in Articles 11, 15 and 27.
4. Intersectionality should be included in Article 3(b) as one of the principles relevant to all human rights. Moreover, the responsibility/duty of businesses to respect all human rights, including the right to development, should be included as a general principle in Article 3.
5. The following provision in Article 5(3) should be qualified with reference to the need to respect planetary boundaries: “Nothing in the present Convention shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their wealth and natural resources in a manner consistent with international law and the provisions of the present Convention.”
6. Article 7 should be revised to separate the independent responsibility/duty of businesses to respect the right to development from the responsibility of everyone to respect human rights. Moreover, businesses should be required to conduct human rights due diligence to ensure that their activities do not abridge the right to development.
7. As the three scenarios in Article 11 need to be satisfied in the alternative, the word “or” should be added after clauses (a) and (b) to avoid any confusion.
8. States’ duty to cooperate in Article 13 should include a duty to ensure policy coherence between the right to development and other relevant frameworks (e.g., dealing trade and investment, development finance, climate change, migration, and regulation of technology) developed at the regional and international levels.
9. Article 16 should be reframed as achieving substantive gender equality without reference to any binary “men-women” typology. A special attention should be given to overcoming intersectional discrimination faced by individuals and groups, especially those who are marginalised or vulnerable.

1. Article 17 should include Indigenous Peoples’ right to self-determination. Moreover, States should meaningfully consult Indigenous Peoples even prior to adopting and implementing all development policies and programmes.
2. Article 20 should be strengthened by adding a requirement for States to consult all relevant stakeholders in a meaningful way in undertaking regular impact assessments of their law, policies, programmes and practices on the realisation of the right to development. Such an assessment should also include bilateral, regional and international agreements negotiated by States.
3. Finally, it seems that the Draft Convention does not adequately capture the importance of the active, free, informed, bottom-up and meaningful participation of rightsholders and communities in all decision-making processes or in the formulation of policies, laws, programmes and initiatives concerning the right to development. A separate provision should ideally be added to obligate States, businesses and other relevant actors such as development finance institution to ensure participation. In the absence of such participation of the intended beneficiaries of the right to development, the resultant development is unlikely to be inclusive, equitable and sustainable.
1. See <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc> [↑](#footnote-ref-1)
2. See <https://www.ohchr.org/en/hr-bodies/hrc/pms-cs/igwg-index1> [↑](#footnote-ref-2)
3. See <https://www.unep.org/about-un-environment/inc-plastic-pollution> [↑](#footnote-ref-3)
4. See <https://unfccc.int/process-and-meetings/conferences/sharm-el-sheikh-climate-change-conference-november-2022/five-key-takeaways-from-cop27> [↑](#footnote-ref-4)