**Second revised text of the draft convention on the right to development**

**Introduction**

This research paper explores four significant gaps in the Second Draft (SD) of the United Nations Convention on the Right to Development. The first gap is the lack of provisions codifying the rights of minorities to participate in Development Planning and Decision-Making Processes (DPDMP). The second gap is the SD’s inadequate protection against discrimination and oppression faced by minorities. The third is ambiguity regarding the Right to Self-Determination (RSD) for minorities and the final gap is the SD’s inadequate protection for cultural rights/heritage of indigenous peoples and other minorities. This report highlights these gaps and provides potential solutions through explicit references, improved monitoring, detection, and accountability mechanisms. These solutions will ensure that the rights of minorities are protected under the Convention.

**Lack of provisions codifying the rights of minorities to participate in development planning and decision-making processes**

The right of minorities to participate in DPDMP is a fundamental aspect of the Right to Development (RD). It recognises the importance of involving individuals/groups, who are most affected by development decisions which impact their lives/communities. However, the SD fails to uphold this principle as it lacks provisions which specifically address this issue and codify such rights.

The draft does not make explicit reference to the participation of minorities in development, and only mentions *"participation of all individuals and peoples" (Article 2.2)*. This lack of clarity is concerning, as it may perpetuate the marginalisation of minorities in development processes.

According to a report by the Office of the High Commissioner for Human Rights, *"the participation of those who may be most affected by a development project, such as minorities, indigenous peoples, and women, is essential to ensuring that the project benefits everyone and does not cause harm."* Additionally, the report emphasises that participation is not just consultation but rather involvement in development and decision-making process. Therefore, the lack of explicit mention of minorities in the draft is a significant gap in ensuring that development processes are inclusive and equitable.

Furthermore, as noted by Professor Ramin Jahanbegloo, *"Development, if not planned and implemented in a participatory manner, can easily lead to the marginalisation of ethnic and religious minorities*.” (14) Thus, it is crucial to ensure that the rights of minorities are explicitly mentioned in the convention to protect them.

To resolve this issue, possible solutions entail the inclusion of explicit references to the participation of minorities in DPDMP, in the text of the Convention. The inclusion of such references would ensure that the rights of minorities are protected through thorough and precise codification resulting in the minorities not being marginalised in development processes.

Additionally, reporting and monitoring mechanisms could be established where states are required to report regularly on their efforts to promote minority participation in DPDMP. The said reports could be reviewed by external oversight bodies and used to identify areas where states are falling short in their obligations and where states have successfully implemented good practices, which could be used create models for other states to follow.

Moreover, the development of detection mechanisms to identify and address cases where minorities have been marginalised in development processes is also another possible solution. Referring to the idea of an external independent body or ombudsman, these entities could receive and investigate complaints regarding the failure of participation of minorities in DPDMP, directly from collective minority organisations and NGOs. This would provide an avenue for minorities to seek redress in cases where their participation has been ignored or marginalised.

In conclusion, the UN convention on the right to development's lack of clarity on minority participation in DPDMP is a significant gap. Explicit references, improved monitoring, and detection mechanisms are necessary to protect minority rights in development.

**Inadequate protection against discrimination and oppression faced by minorities**

The SD includes provisions for the protection of minority groups against discrimination and other forms of oppression. The draft does indeed recognise that for the equal enjoyment of the right to development, discrimination in all its forms must be eliminated by states, as stipulated in Article 5.1. However, the draft does not comprehensively cover this issue and gives it minimal attention.

The convention mentions non-discrimination as a guiding principle but does not provide a specific definition nor guidance on how to ensure this principle is upheld. Furthermore, the draft does not explicitly mention vulnerable groups, such as ethnic and linguistic minorities, as groups that require special protection.

Professor Régis Malet, highlights the need for the convention to recognise the diversity of groups within societies and the need for targeted measures to address discrimination/inequalities faced by these groups. Malet, argues that specific policies and programs are needed for specific groups’ needs (Eide & Jørgensen 799-827). Similarly, a report by the UNDP emphasises the importance of recognising the specific needs and experiences of minority groups in DPDMP.

To address this issue, the convention could include explicit provisions to protect the rights of minority groups, including measures to address discrimination. The convention could also establish external bodies like those in the case of DPDMP, which monitor and ensure that states are complying with their obligations to protect minority rights.

Another possible solution could be the creation of accountability mechanisms to hold individuals or institutions responsible for discriminatory actions. This can involve the creation of investigative tribunals which would have the power to sanction or penalise those found to be engaging in discriminatory practices; ultimately, creating a culture of responsibility and retribution which will also act as a deterrent to future discriminatory behaviour. The Canadian Human Rights Commission is a prime example which can be used as model, its responsible for investigating complaints of discrimination and can hold public hearings and make recommendations for remedial action.

In conclusion, the SD overlooks minority group protection against discrimination and must acknowledge their diversity and needs through specific policies and programs.

**Ambiguity regarding the right to self-determination for minorities**

Self-determination is the right of a group of people to determine their own political status, to pursue their own economic, social, and cultural development, thus, having a say in their own governance without external interference. This right is enshrined in international law and is recognised as a fundamental human right.

While the SD includes provisions on the right to self-determination in Article 1, these provisions lack clarity and could be open to abuse. The UK expressed concern that the draft *"could provide a basis for unilateral secession or territorial dismemberment and is therefore inconsistent with the principle of territorial integrity."* Similarly, the European Union has noted that *"the precise meaning and scope of the right to self-determination is not clear."*

As mentioned, the ambiguity of the provisions leaves open the possibility of abuse by states. Anastasia Ufimtseva, an international law expert, has noted that *"the notion of self-determination is often associated with the right to secession, which can be a contentious issue in many countries where minority groups seek greater autonomy"* (41-57). Consequently, many states incorrectly attribute self-determination to solely secession, resulting in many taking measures to prevent minorities from gaining any rights due to fear of territorial loss. Additionally, the ambiguity causes inconsistent implementation of the Convention, as the meaning of the RSD is open to interpretation and many states would interpret the right in ways that serve their own interest.

To address this issue, it is important that the convention provides a clear and concise definition of the RSD. As Ufimtseva has suggested, *"the right to self-determination should be interpreted in a way that is consistent with international law and does not violate the territorial integrity of states."* (41-57). This could be achieved by providing guidance on the circumstances in which the right can be exercised, and by specifying the rights and responsibilities of both minority groups and the state in the process.

Additionally, providing legal assistance and mediation services can help resolve the issue of self-determination by aiding conflict resolution between states and minority groups. These services provide minority groups with the resources and knowledge to navigate legal processes and negotiate with states for their rights. Mediation facilitates dialogue and compromise, potentially leading to greater autonomy and recognition of minority rights, while helping states avoid conflict and secession.

In conclusion, the right to self-determination is a fundamental human right recognised by international law, yet the SD lacks clarity regarding this. Clear definitions and guidelines are needed to prevent ambiguity and ensure that the right is interpreted in a correct way. Legal assistance and mediation services can also play a crucial role in resolving conflicts related to self-determination.

**Inadequate protection for cultural rights and heritage of indigenous peoples and other minorities**

Cultural rights and heritage of indigenous peoples and minorities refer to their right to maintain, develop, and express their own cultural identities, including languages, beliefs, customs, and traditions. It is an essential aspect of their identity and a means of preserving their unique heritage for future generations.

The SD does not adequately protect this right, as the draft only briefly mentions the need to protect cultural diversity and heritage, without addressing the specific concerns of minority communities. Article 6 of the draft does acknowledge the importance of cultural diversity in development and calls for respect for cultural identity and heritage but does not provide a specific framework for protecting cultural rights.

The lack of consultation with indigenous peoples and other minorities during the drafting process is a significant issue. As Indigenous scholar, Erika George notes, "*the Convention does not appear to have been developed with the input or guidance of those who are most likely to be affected by its provisions."* (George 125-149) This lack of consultation has led to concerns that the Convention does not reflect the unique cultural and historical experiences of minority communities.

Moreover, the Convention does not provide explicit protection for the intellectual property rights (IPR) of Indigenous peoples. The Convention does not establish a clear mechanism for protecting Indigenous peoples' traditional knowledge and cultural expressions, which are often subject to exploitation and appropriation by non-Indigenous actors.

Possible solutions to protect minority and indigenous cultural rights could involve initiatives to raise awareness about cultural diversity and heritage through educational programs for both minority groups and the wider population, public campaigns, and media outreach. These efforts promote greater understanding and appreciation for the cultural contributions of these groups and respect for their rights to self-determination. This creates a more supportive environment for the inclusion of their practices and traditions in development processes and prevents marginalisation and erasure.

Additionally, the Convention could provide greater support for the preservation and promotion of Indigenous languages and cultural practices. It is widely established that language and culture are inseparable as the former encodes the latter, as such, the Convention could establish a fund specifically designed to support the revitalisation and preservation of Indigenous languages, which are often at risk of extinction due to colonialism, globalisation, and other forms of oppression.

Furthermore, IPR of these groups can be protected through requiring states to introduce legislative measures to protect their IPR and prevent their unauthorised use, appropriation, or exploitation by others. This mechanism could be designed to ensure that Indigenous peoples and other minority groups determine clear rules of how their cultural heritage is protected/promoted by non-Indigenous actors.

In conclusion, the SD fails to adequately protect the cultural rights and heritage of indigenous peoples and minorities. Lack of consultation and explicit protection of intellectual property rights are major issues. Initiatives to raise awareness and greater support for the preservation of indigenous languages and cultural practices could address these gaps.

**Conclusion:**

It is evident that the protection and promotion of the rights of minorities and indigenous peoples is crucial for building inclusive and just societies. The four issues discussed in this report are just some of the issues the SD needs to address to create a convention that is just, fair, and equitable. Addressing these gaps requires collective action from governments, civil society, and international organisations to ensure that the rights of minorities and indigenous peoples are respected, protected, and fulfilled.

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