

**Submission by Third World Network
On the Second Revised Draft
Of the Convention on the Right to Development
5 May 2023***

I. Introduction

Third World Network (TWN) is pleased to make this submission in response to the call for comments and textual suggestions on the second revised draft convention on the Right to Development¹ that is currently under consideration with the Working Group on the Right to Development.

TWN is an NGO with ECOSOC consultative status. Based in Malaysia with offices and researchers in Europe, Asia, Oceania, Africa, North America, and Latin America, TWN is an independent non-profit international research and advocacy organisation involved in issues relating to development, developing countries and North-South affairs. It seeks to bring about a greater articulation of the needs and rights of peoples in the Global South, a fair distribution of world resources, and forms of development which are ecologically sustainable and fulfill human needs, and to deepen the understanding of the development dilemmas and challenges facing developing countries and to contribute to policy changes in pursuit of just, equitable and ecologically sustainable development. TWN conducts research on economic, social, health and environmental issues pertaining to the South; publishes books and magazines; participates in intergovernmental processes; organises and participates in conferences, seminars and workshops; and provides a platform representing broadly developing country interests and perspectives at international fora such as United Nations agencies UN General Assembly, UN Human Rights Council, UNCTAD, UNFCCC, UNEP, Convention on Biological Diversity, and specialized agencies such as FAO, WHO and WIPO, as well as WTO, the World Bank and IMF.

TWN is fully supportive of the ongoing effort in the Working Group on the Right to Development to develop and finalize the proposed Convention on the Right to Development. Doing so will be a significant step in the concretization under international law of the Right to Development as a fundamental human right. The existing Declaration on the Right to Development, adopted by the UN General Assembly in 1986 (as Document 41/128) is almost forty years old.

Its adoption was a milestone in international cooperation and highlighted a global vision of fairness and equity in global relations that, at the time that it was adopted, was marked by deep divisions and distrust among countries and a wide development gap between developed and developing countries. The world is now radically different yet at the same time radically similar to how it was in 1986. The development divide between developed and developing countries continues to exist, albeit with different characteristics now. Internal and cross-border conflict and political insecurity is distressingly present in many parts of the world. While the global economy has expanded, bringing along with it increased prosperity for billions of people, such expansion has been undertaken in a manner that has intensified economic, social, and political inequity within and among countries.

Since 1986, the world has seen shifts of historical significance as some developing countries experienced rapid and systemic declines in poverty and moved forward in achieving their right to development, primarily through their strategic use of national policy space in the context of changing global economic and political conditions. At the same time however, many more developing countries continue to remain mired in poverty and barely able to provide for their people, because of the adverse effects of those same changing global economic and political conditions, invasion and war, and widening development, technological, digital, and resource gaps, compounded by the increasingly adverse effects of environmental degradation and climate change.

* For more information about the contents of this submission, please contact: Ms. CHEE Yoke Ling, Director, Third World Network; email – yokeling@twnetwork.org. This submission is made without prejudice to further submissions or comments that may be provided by TWN to the Working Group on the Right to Development. This submission is being made following the call for submissions from the Working Group, pursuant to which submissions are to be made no later than 12 May 2023, to ohchr-r2d@un.org

¹ See A/HRC/WG.2/24/2, 30 November 2022.

It is in this context that clearly institutionalizing the Right to Development as a fundamental treaty-based right through the negotiation and adoption of the draft Convention becomes extremely important. In doing so, it will provide States with the normative international law basis, in addition to the Declaration on the Right to Development, for making such right operational at the multilateral and national levels.

II. Systemic Challenges to the Right to Development

The second revised draft of the Convention highlights significant advances in multilateral policymaking that are relevant to the Right to Development, especially providing a greater emphasis on the various multilateral declarations, decisions, treaties, plans of action, and other steps taken within the outside the United Nations system relating to sustainable development, international trade, international finance, climate change, environmental degradation, disaster risk reduction and management, and other issues.

This is only fitting because the world is now amid several social and environmental trends that have important long-lasting effects. Some are on the verge of reaching a tipping point, where a long-term trend produces critical and sometimes irreversible events. The realization of the Right to Development requires that we identify, diagnose and address these global issues, challenges and problems. In doing so, these should then be reflected in the Convention on the Right to Development as a way of triggering enhanced international cooperation on such Right pursuant to States' duty to cooperate.

1. The global economy remains uncertain, and systemic crises are emerging

The continued economic sluggishness in developed countries, seen in growth rates that are well below pre-2008 financial crisis and pre-COVID19 pandemic levels, has had adverse impacts on developing countries' economies, whose own growth rates are also now much lower and, in many cases, converging downwards. With commodity prices down, many commodities dependent developing countries are facing reduced export earnings. Many countries are going through great fluctuations in the inflow and outflow of funds, due to the absence of controls over speculative capital flows. Currencies are fluctuating due to lack of a global mechanism to stabilize currencies. Growth rates have fallen in Africa and elsewhere and many developing countries are on the brink of another debt crisis. There is for them an absence of an international sovereign debt restructuring mechanism, and countries that do their own debt workout may well become victims of vulture funds. All these become challenges for maintaining development, and are obstacles to the right to development, and need addressing.

2. The challenges of implementing appropriate development strategies through industrial policy.

Developing countries that aspire to achieving sustained economic growth and sustainable economic development face many challenges in formulating and implementing policies that work to shift and diversify their economies away from subsistence or low-skill/low value added sectors to higher value added sectors such as industrial manufacturing. There are challenges in getting policies right in agricultural production, ensuring adequate livelihoods and incomes for small farmers, and national food security. Countries that aim to industrialise face the challenges of climbing the ladder from starting viable low-cost industries to establishing labour-intensive industries to higher technology industries including overcoming the middle-income trap. Then there are the challenges to build a range of services, including providing social services like health and education and water supply, lighting and transport, developing financial services and commerce. These sectoral policies and the overall policy are even more difficult to formulate and implement due to the trend of liberalisation and the dangers of premature liberalisation as a result of loan conditionality and recently due to trade and investment agreements which also constrain policy space. In particular, investment agreements that contain the investor-state dispute settlement (ISDS) system enable foreign investors to take advantage of imbalanced provisions and great shortcomings in the arbitration system that not only cause countries a lot of costs but also put a chill or constraint on the ability to make policy. There is an increasing legitimacy problem for the investment rules regime. These challenges and obstacles to development policy making should be addressed including through processes relating to international cooperation that would be reflected in the draft Convention on the Right to Development.

3. Climate change has become an existential problem for the human race.

Climate change is an outstanding example of an environmental constraint to development and the right to development. The UN Framework Convention on Climate Change and its related instruments in the Kyoto Protocol and the Paris Agreement are landmark international instruments to address climate change but much more needs to be done. In seeking a solution to climate change, one key question is which countries and which groups within countries should cut emissions by how much? The danger is that the burden will mainly be passed on to developing and poorer countries and to the poor and vulnerable in each country. This is a major challenge to development and the realization of the right to development. Climate change should hence have a more prominent reflection in the second draft of the Convention.

4. Health crises such as anti-microbial resistance and new pandemics bring new dangers to global solidarity.

The COVID-19 pandemic showed the world that the very interconnectedness of the global economy allowed for the rapid transmission of new microbes and viruses around the world, with devastating consequences on individual lives, community life, and economic situations. As the pressures of climate change and human-caused environmental degradation and ecosystem encroachment bring humans into closer contact with wildlife, it is almost a certainty that new zoonotic diseases could arise to again hit the human community. Another possible existential issue that is less known is antibiotic resistance or more broadly anti-microbial resistance. Many diseases are becoming increasingly difficult to treat because bacteria have become more and more resistant to anti-microbials. Some strains of bacteria are now resistant to multiple antibiotics and a few have become pan resistant – resistant to all antibiotics. Other bacteria have been discovered to have genes with the frightening ability to easily spread resistance to other species of bacteria even to the most powerful antibiotics that we currently have. Developing countries require funds and technology such as microscopes and diagnostic tools; they also need to have access to existing and new medicines and antibiotics at affordable prices; and people in all countries need to be protected from new viral surges and anti-microbial resistance if life expectancy is to be maintained and if there is to be realization to the right to development. The draft Convention on the Right to Development does have references to health emergencies and health crises, but its operational provisions could be further enhanced to provide for a duty to cooperate among States with respect to addressing such health emergencies and crises.

5. The impact of rapid technological change.

The rapid pace of technological change, including the advent of artificial intelligence and robotics, the increased digitalization and automation of productive forces in many national economies, and the explosion of digital connectivity (through the Internet and the Internet of Things) can pose significant challenges as well as opportunities for employment, production, consumption, and knowledge control particularly on developing countries. Increased automation, for example, can result in increased productivity without necessarily increasing employment and income growth. Taking advantage of opportunities will require significant strategic and directed investments into R&D, which in turn will determine who gains and loses from the new technologies emerging in energy, manufacturing, provision of services, travel and transportation, production of consumer goods. Issues of ownership and control, access, the regulation of AI and robot technology, and addressing the impact of underlying IPRs over control and access need to be addressed, particularly with respect to innovation and the sharing of innovation benefits from technology. Privacy issues and control of big data and the Internet will also be important considerations. In many countries, especially developing countries, the policy framework for strategically addressing these issues do not yet exist, and missing out on the opportunities while failing to address the challenges will adversely impact the achievement of the right to development. The draft Convention on the Right to Development should have operational provisions for technology transfer, including addressing challenges and barriers to such transfer posed by intellectual property rights. Currently, the draft does not have any reference to intellectual property rights or how to address the challenges these pose to the Right to Development.

6. Demographic change.

The global population is projected to grow from today's 8 billion to around 9 billion by the year 2050, with virtually all of that growth happening in most developing countries. The key challenge to achieving the right to development, therefore, in these circumstances is to ensure that the economies of developing countries are able to expand, diversify and develop sufficiently fast enough so as to be able to provide enough decent jobs and economic opportunities for the millions of young people in Asia, Africa and Latin America who will be entering the labour force and looking for jobs and economic opportunities every year. The development dividend arising from having a youthful labour force will arise only when appropriate and strategic policy interventions are made beforehand to ensure that the domestic economy is robust and able to generate enough opportunities for the youth to find paid work and contribute to the economy. Failure to do so can give rise to economic, social and political instability; internal displacement and external migration; and increased hardship, resulting in failure to achieve the SDGs, the right to development, and increased challenges to the enjoyment of all human rights.

III. Systemic Solutions Are Needed

Addressing these multiple challenges to development in a manner that allows the global community, and particularly developing countries, to achieve the right to development and promote the full enjoyment of all human rights, will require systemic approaches and solutions. These include the following:

1. First, a key objective of the SDGs as part of Agenda 2030, and to achieving the right to development, is to secure an accommodating international environment for development, particularly for developing countries, through an enhanced, strengthened, and supportive international policy environment for international cooperation, consistent with long-standing commitments from the developed countries to support the development objectives of developing countries. This is clearly seen in SDG Goal 17. The focus should be on helping developing countries pursue an active industrial policy to develop their domestic and regional industrial base, robust local markets, and dynamic enterprise sector (subsidies and regulations to support domestic productive capacity, SOEs where appropriate, public sector procurement, regulate ownership of productive assets (including IPR), address inequalities)

2. Second, by virtue of their circumstances, developing countries would require special and differentiated treatment and policy space and flexibility compared to developed countries when it comes to international rules and obligations, as well as with respect to the SDGs, since the goals will be applied to all countries. In this context, the Rio principles and particularly the principle of common but differentiated responsibilities (CBDR) are important principles to be reflected applied in a central way when implementation is undertaken.

3. Third, the effective implementation of the SDGs and Agenda 2030, together with the other outcomes from 2015 such as the UNFCCC Paris Agreement, as factors to help ensure that developing countries are able to achieve the Right to Development will depend on achieving systemic reforms in various global policy regimes such as in multilateral trade, global macroeconomic governance, international taxation, investment, debt workout and restructuring, and other areas, in order to create an improved international policy environment that will be fully supportive of developing countries' development needs and priorities. These systemic reforms cannot be divorced or be seen as separate from the achievement particularly of Goal 17 of the SDGs.

4. Fourth, the entire structure of the SDGs and Goal 17 in particular is premised on there being a strong international partnership for the provision of the needed financial and technological resources to developing countries to achieve the SDGs. Such resources should be provided through an enhanced global partnership for development, in which the provision of the means of implementation to developing countries will be a key component. Implementing the SDGs, Agenda 2030, and the climate change agreements, in a manner that is coherent, comprehensive, and cohesive, will require trillions of dollars annually in new and additional financing and investments in developing countries. To this end, there are existing financing and technology transfer commitments – including in ODA and climate financing – from developed to developing countries that still need to be fully fulfilled. This should be at the core of the global

partnership for development. At the same time, recognizing that North-South public financing and technology transfers will not be sufficient, developing countries need to be enabled to mobilize and retain their domestic resources themselves to finance their own industrialization and development. This means fostering rapid technology diffusion, transfer, and innovation, in both North and South, to maximize income and industrial productivity potential arising from automation, internet connectivity, and climate change mitigation and adaptation actions. It also means generating and channeling financial resources (domestic and external resources) into climate-adapted infrastructure development and productive capacity development in the South, and climate retro-fitting infrastructure in the North, and to provide social security floors; increased ODA, effective tax cooperation, curb illicit flows, debt restructuring, strategically regulated FDI for development. This will require changes in the multilateral finance, trade, debt, and taxation policy architecture to provide developing countries with greater policy space and flexibility to be able to impose, when needed and appropriate, capital controls on outflows, lessen their vulnerability to external economic shocks, and maximize the developmental impact of domestic investments and productive activity in developing countries. The multilateral, regional and bilateral investment regimes should be reformed in order to enable developing countries to channel foreign investments into those sectors of the economy that can best spur sustainable industrial development in developing countries.

5. Fifth, to complement the provision of the means of implementation for the SDGs and the undertaking of systemic multilateral policy reforms in order to make the international policy environment more positive for developing countries' achievement of the Right to Development, reforms in international economic governance institutions, such as the World Bank, the IMF, the Bank of International Settlements, are also required in order to provide developing countries with greater levels of voice and participation in their decision-making. Additionally, multilateral norm-making and standards-setting, particularly with respect to issues that will have economic impacts on developing countries, should be undertaken in universal multilateral institutions such as the United Nations. Stronger South-South multilateral and regional cooperation can also serve as the basis for North-South engagement; this means that South-South cooperation would also need to be focused on strategic political/policy coordination in various multilateral policy areas (trade, climate, health, IPR, science, environment, etc.), economic engagement, technology development, resource mobilization, industrial and infrastructure development.

IV. Reflecting the Duty to Cooperate as a Key Element of the Right to Development

Article 13 of the draft Convention on the Right to Development articulates States' duty to cooperate with respect to the achievement of the Right to Development. It is useful to recall in this connection some relevant provisions from the 1986 Declaration on the Right to Development. For example, the Declaration establishes a clear "primary responsibility" on the part of States to create "national and international conditions favourable to the realization of the right to development."² In so doing, States have a duty to cooperate with "each other in ensuring development and eliminating obstacles to development," and should "realize their rights and fulfill their duties in such a manner as to promote a new economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights."³ Further, States have a "duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development," for which "sustained action is required to promote more rapid development of developing countries."⁴ Thus, effective international cooperation toward the provision of appropriate means and facilities to foster comprehensive development is an essential complement to the efforts of developing countries to achieve their Right to Development.⁵

Further, the 1993 Vienna Declaration and Programme of Action on the Right to Development also includes a discussion of international cooperation, stating that "States should cooperate with each other in ensuring development and eliminating obstacles to development," and calling upon the international community to "promote an effective international cooperation for the realization of the right to development and the

² Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc A/RES/41/128 (Dec. 4, 1986), art. 3.

³ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc A/RES/41/128 (Dec. 4, 1986), art. 3.

⁴ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc A/RES/41/128 (Dec. 4, 1986), art. 4.

⁵ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc A/RES/41/128 (Dec. 4, 1986), art. 4.

elimination of obstacles to development.”⁶ It states that “lasting progress toward the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.”⁷

Language in the Universal Declaration of Human Rights addresses the question of cooperation in pursuance of human rights obligations, stating that all people are “entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”⁸ Additionally, the International Covenant on Economic, Social and Cultural Rights requires that each State Party “undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁹ It is significant to note that the language employed in these documents, both of which are now widely considered to be binding,¹⁰ establish that realization of rights should be achieved through national *and* international cooperation, emphasizing that not only national action but also international cooperation are necessary mechanisms for establishing human rights.

One of the purposes and objectives of the United Nations enumerated in the United Nations Charter is the achievement of “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹¹ This objective is made operative in the promotion of “conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”¹² In pursuance of this, the Charter mandates that the U.N. should promote: “higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Thus, U.N. member-States are required to “pledge themselves to take joint and separate action in co-operation with the Organization.”¹³

Given the changing development context that all countries now operate in, with additional constraints being imposed by climate change and global environmental degradation, there now exists an opportunity for the draft Convention on the Right to Development to emphasize and enhance the language on the Duty to Cooperate in its Article 13 to promote a new international economic order. An operational Duty to Cooperate has the potential to serve as the basis for a more coherent and systemic approach to development policy globally but also for a realignment of the global political, economic, and social framework that will ensure a treaty-based, truly progressive international development framework.

⁶ World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 10, U.N. Doc. A/CONF.157/23 (July 12, 1993).

⁷ World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 10, U.N. Doc. A/CONF.157/23 (July 12, 1993).

⁸ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 22, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁹ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 2.1, U.N. Doc. A/6316 (Dec. 16, 1966).

¹⁰ The International Covenant on Economic and Social Rights is binding on States Parties upon entry into force, taking into consideration valid reservations, while the Universal Declaration of Human Rights is considered by leading scholars to be firmly established as customary international law. *See, e.g.*, Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 289 (1995); Richard B. Lillich, *The Growing Importance of Customary International Human Rights Law*, 25 GA. J. INT'L & COMP. L. 1, 1-8 (1995).

¹¹ U.N. Charter, art. 1.3.

¹² U.N. Charter, art. 55.

¹³ U.N. Charter, art. 56.

V. Conclusion

The achievement of the Right to Development is the foundation upon which all other human rights are to be achieved. The Right to Development is the basis for ensuring that economic, social, and political stability and security are achieved and maintained in developing countries, and along with these the full and effective enjoyment of human rights for all. This therefore means that neither the achievement of progress towards the Right to Development nor the implementation of the SDGs can be reduced to a matter of measurement, of indicators.

A global, macroeconomic, perspective is required – a perspective that looks at whether or not developed countries are dealing with developing countries in a fair and equitable manner and addresses the challenges that developing countries face in undertaking their development in the face of the opportunities and constraints that exist in the various multilateral policy regimes (trade, finance, investment, tax, debt, climate change, human rights, etc.) that they are a part of.

It is fitting to recall some of the important elements of this right to development. It is human and people centered. It is a human right, where every human person and all peoples are entitled to participate in, contribute to and enjoy development in which all rights and freedoms can be fully realized. The human person is the central subject of development and should be the active participant and beneficiary of development.

It gives responsibility to each State to get its act together to take measures to get its people's right to development fulfilled. But it also places great importance to the international arena, giving a responsibility to all countries to cooperate internationally and especially to assist the developing countries.

It recognizes that international relations and rules have important roles. And it implicitly recognises that there are imbalances and inequities in the existing international order that hinder countries from implementing the right to development. Therefore, it calls for a new equity-based international order.

The right to development is also practical. It calls for the realization of the right to development. It recognizes that there are obstacles to the realization of the right to development. It also recognizes that there are international-level obstacles and national-level obstacles, and encourages all parties and stakeholders to identify these obstacles and to act to remove these obstacles. The international obstacles obviously require international cooperation to address them.

Having a new Convention on the Right to Development, with strong operational provisions on the duty to cooperate and a more systemic and structural approach towards addressing the development problematique, can be an important contribution towards building a just, equitable and fair world future for all.

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