Recommendation and Suggestion on Amendments to the Second Revised Text of the Draft Convention on the Right to Development

China Society for Human Rights Studies (CSHRS)

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Note: For the convenience of reading, the modified parts of specific provisions are marked in yellow text

As an NGO with consultative status in the United Nations Economic and Social Council, the China Society for Human Rights Studies dispatched Mr. Wang Xigen to participate in the Meeting on the revision of the Draft Convention on the Right to Development (the Second Draft), held in in Geneva in May 2023 by the United Nations Working Group on the Right to Development. Mr. Wang Xigen took the lead to complete the revision proposal of the draft convention, which is now submitted to the responsible organization of the United Nations as a written proposal.

The recommendation and suggestion of the proposal are based on the Revised Text of the Draft Convention on the Right to Development (the Second Draft) issued by the United Nations on November 30, 2022.

**The basic principles and ideas upheld in this revised proposal are as follows:**

1. Respecting the basic principles established by international law, especially the Declaration on the Right to Development. In terms of the legal textual basis of the right to development, the basic spirit of the existing international human rights legal system, especially the Declaration on the Right to Development adopted by the United Nations in 1986, should always be adhered to.

2. Guided by the principle of combining the universality and particularity of the right to development. The right to development is a basic human right enjoyed by all human beings in a universal and equal manner without discrimination. In today’s world of development deficits and imbalance, it is especially important to ensure that the right to development of the vast number of developing countries and vulnerable groups are equally implemented.

3. Clarifying the inherent attributes of the right to development. In terms of the human rights nature of the right to development, the right to development is a fundamental and inalienable human right. On the one hand, the right to development is interrelated, co-existing and interacting with other human rights; on the other hand, the right to development is a relatively independent form of human rights, which should not be absorbed or even replaced by other human rights.

4. Emphasizing the unique value of the right to development for all human beings and all individuals. In terms of the subject of the right to development, the right to development is the right of all human beings and every individual who makes up human beings. All human beings and individuals are the beneficiaries of the right to development. The convention on the right to development should focus on and guarantee the right to development of developing countries, especially the least developed countries and vulnerable groups, while protecting the right to development of all subjects equally.

5. Taking the right to development as an open system. In terms of the object of the right to development, the right to development refers to the benefits brought about by economic, political, social, cultural and environmental development. This means that the benefits of development are a composite rather than a mere reference to the economy or one or several other aspects, and that the lack or insufficiency of development in any one of these aspects will affect the full realization of the right to development.

6. Insisting on the principle of inclusive and equitable development. In terms of the core principles of the right to development, it should be fully recognized that the core of the right to development is equal opportunities for development. Everyone and any country should have equal opportunities for development, and adhering to the principles of equality and non-discrimination is extremely important for the realization of the right to development. To this end, the emphasis should be placed on the equal right to development of the pole that is in an unequal and disadvantaged position of development, including the right to development of developing countries and special groups in society, such as ethnic minorities, women, children, the elderly and the disabled among all human beings.

7. Stressing the extreme significance of sustainable development for the realization of the right to development. In terms of the driving mechanism of the right to development, the realization of the right to development depends on sustainable development, and sustainable development is the only way to realize the right to development. On this point, it is necessary to ensure that all countries, especially developing countries, can follow the path of sustainable development, and consolidate their sustainable development capabilities.

8. Paying special attention to the status and role of development in the enjoyment and promotion of the right to development. In terms of the path of realizing the right to development, the development-based approach to human rights should be highlighted, in addition to respecting the human rights-based approach to development. Without development, there is no right to development. Without high-quality and sustainable development, it is impossible to implement the right to development in a comprehensive, complete and effective manner.

Based on the aforementioned considerations, the following 25 specific amendments and suggestions are proposed for the second draft of the Draft Convention on the Right to Development:

**1. The revised suggestions to the 14th paragraph of the Preamble**

1. The original text is:

“Concerned at the existence of serious obstacles to the realization of the right to development comprising, inter alia, poverty in all its forms and dimensions, including extreme poverty, hunger, inequality in all forms and manifestations within and among countries, climate change, health emergencies and health crises, colonization, neo-colonization, forced displacement, racism, discrimination, conflicts, foreign domination and occupation, aggression, threats against national sovereignty, national unity and territorial integrity, terrorism, crime, corruption, all forms of deprivation affecting the subsistence of peoples, and the denial of other human rights”

1. Revised suggestion is:

Adding “protectionism, unilateralism” after “inequality in all forms and manifestations within and among countries”.

1. The complete statement of this revised paragraph should read:

“Concerned at the existence of serious obstacles to the realization of the right to development comprising, inter alia, poverty in all its forms and dimensions, including extreme poverty, hunger, inequality in all forms and manifestations within and among countries, protectionism, unilateralism, climate change, health emergencies and health crises, colonization, neo-colonization, forced displacement, racism, discrimination, conflicts, foreign domination and occupation, aggression, threats against national sovereignty, national unity and territorial integrity, terrorism, crime, corruption, all forms of deprivation affecting the subsistence of peoples, and the denial of other human rights”

**2. The revised suggestions to the 16th paragraph of the Preamble**

(1) The original text is:

“Recognizing that development is a comprehensive civil, cultural, economic, environmental, political and social process that is aimed at the constant improvement of the well-being of the entire population and of all peoples and individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”

(2) Revised suggestion is:

Amending “civil, cultural, economic, environmental, political and social” to “economic, political, social, cultural and environmental”.

(3) The complete statement of this revised paragraph should read:

“Recognizing that development is a comprehensive economic, political, social, cultural and environmental process that is aimed at the constant improvement of the well-being of the entire population and of all peoples and individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”

**3. The revised suggestions to the 18th paragraph of the Preamble**

1. The original text is:

“Reaffirming the universality, indivisibility, interrelatedness, interdependence and mutually reinforcing nature of all civil, cultural, economic, political and social rights, including the right to development”

(2) Revised suggestions are:

a. Amending “civil, cultural, economic, political and social rights” to “civil and political rights, and economic, social, cultural and environmental rights”.

b. Amending “including the right to development” to “together with the right to development”

(3) The complete statement of this revised paragraph should read:

“Reaffirming the universality, indivisibility, interrelatedness, interdependence and mutually reinforcing nature of all civil and political rights, and economic, social, cultural and environmental rights, together with the right to development”

**4. The revised suggestions to the 19th paragraph of the Preamble**

(1) The original text is:

“Recognizing that the realization of the right to development constitutes an important end and an integral means of sustainable development, and that the right to development cannot be realized if development is not sustainable”

1. Revised suggestion is:

Amending “an integral means of sustainable development” to “sustainable development is an integral means of realizing the right to development”

1. The complete statement of this revised paragraph should read:

“Recognizing that the realization of the right to development constitutes an important end and sustainable development is an integral means of realizing the right to development, and that the right to development cannot be realized if development is not sustainable”

**5. The revised suggestions to the 21th, 22th paragraph of the Preamble**

1. The original text of 21th para is:

“Recognizing also that the individual and peoples are the central subjects of the development process, and that development policy should therefore make them the main participants and beneficiaries of development”

1. Revised suggestion is:

Amending “the individual and peoples” to “the entire population and all individuals”

(3) The complete statement of this revised paragraph should read:

“Recognizing also that the entire population and all individuals are the central subjects of the development process, and that development policy should therefore make the entire population and all individuals the main participants and beneficiaries of development”

Ps. the expression of “all individuals and peoples” in 22th para should also be replaced by “the entire population and all individuals”.

**6. The revised suggestions to the 24th paragraph of the Preamble**

(1) The original text is:

“Recognizing that every organ of society at the national or international level has a duty to respect the human rights of all, including the right to development”

(2) Revised suggestion is:

Deleting “the human rights…including”

1. The complete statement of this revised paragraph should read:

“Recognizing that every organ of society at the national or international level has a duty to respect the right to development of all”

**7. The revised suggestions to Article 1**

1. The original text is:

“The object and purpose of the present Convention is to promote and ensure the full, equal and meaningful enjoyment of the right to development by every individual and all peoples everywhere, and to guarantee its effective operationalization and full implementation at the national and international levels”

1. Revised suggestion is:

Amending “and meaningful” to “effective and sustainable”

1. The complete statement of this revised paragraph should read:

“The object and purpose of the present Convention is to promote and ensure the full, equal, effective and sustainable enjoyment of the right to development by every individual and all peoples everywhere, and to guarantee its effective operationalization and full implementation at the national and international levels”

**8. The revised suggestions to Article 3 (a)**

1. The original text is:

“Development centred on the individual and peoples: the individual and peoples are the central subjects of development and must be the active participants and beneficiaries of the right to development”

(2) Revised suggestions are:

a. Revising “Development centred on the individual and peoples” to “Development should be based on people-oriented principle”

b. Adding “It should respect the dominant status of the people, persist in developing for the people, relying on the people, benefiting the people, and that its fruits are shared by the people more abundantly and fairly”

c. Deleting “the individual and”

(3) The complete statement of this revised paragraph should read:

“Development should be based on people-oriented principle: It should respect the dominant status of the people, persist in developing for the people, relying on the people, benefiting the people, and that its fruits are shared by the people more abundantly and fairly. Peoples are the central subjects of development and must be the active participants and beneficiaries of the right to development”

**9. The revised suggestions to Article 3 (b)**

(1) The original text is:

“Principles common to all human rights: the right to development should be realized in a manner that integrates the principles of the universality, inalienability, indivisibility, interdependence and interrelatedness of all human rights, as well as of equality, non-discrimination, empowerment, participation, transparency, accountability, equity, inclusion, accessibility and subsidiarity”

(2) Revised suggestions are:

Breaking this paragraph down into two principles: (b). the principle of shared benefits; (c). the principle of good laws and good governance

(3) The complete statement of this revised paragraph should read:

“(b) the principle of shared benefits: ensure the realization of equal rights, equal opportunities and fair rules, so that all people and all individuals can participate in the development process on an equal, undifferentiated and non-discriminatory basis, share the fruits of development equally, and realize the unity of sharing by all people, sharing comprehensively, sharing jointly, and sharing progressively.

(c) the principle of good laws and good governance: insist on the rule of law and good governance, and realize the principles of participation, transparency, accountability, effectiveness and efficiency, equality and equity, accessibility and subsidiarity”

**10. The revised suggestions to Article 3 (c)**

(1) The original text is:

“Human rights-based development: as development is a human right that is indivisible from and interrelated and interdependent with all other human rights, the laws, policies and practices of development, including development cooperation, must be normatively anchored in a system of rights and corresponding obligations established by international law”

(2) Revised suggestions are:

a. amending “international law” to “international legal documents”

b. adding “to which countries have participated or ratified” after “international legal documents”

(3) The complete statement of this revised paragraph should read:

“Human rights-based development: as development is a human right that is indivisible from and interrelated and interdependent with all other human rights, the laws, policies and practices of development, including development cooperation, must be normatively anchored in a system of rights and corresponding obligations established by international legal documents to which countries have participated or ratified”

**11. The revised suggestions to Article 3 (d)**

(1) The original text is:

“Contribution of development to the enjoyment of all human rights: development, as described in the present Convention, is essential for the improvement of living standards and the welfare of individuals and peoples and contributes to the enjoyment of all other human rights”

(2) Revised suggestions are:

a. Amending “Contribution of development to the enjoyment of all human rights” to “Development-based approach to human rights”

b. adding “valuing contribution of development to the enjoyment of all human rights” after the first revision

(3) The complete statement of this revised paragraph should read:

“Development-based approach to human rights: valuing contribution of development to the enjoyment of all human rights. Development, as described in the present Convention, is essential for the improvement of living standards and the welfare of individuals and peoples and contributes to the enjoyment of all other human rights”

**12. The revised suggestions to Article 3 (k)**

(1) The original text is:

“Universal duty to respect human rights: everyone has the duty to respect all human rights, including the right to development, in accordance with international law”

(2) Revised suggestions are:

a. amending “Universal duty to respect human rights” to “Universal duty to respect the right to development”

b. deleting “all human rights, including”

(3) The complete statement of this revised paragraph should read:

“Universal duty to respect the right to development: everyone has the duty to respect the right to development, in accordance with international law”

**13. The revised suggestions to Article 4.1**

(1) The original text is:

“Every individual and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to and enjoy civil, cultural, economic, environmental, political and social development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms”

(2) Revised suggestion is:

Amending “civil, cultural, economic, environmental, political and social development” to “economic, political, social, cultural and environmental development”

(3) The complete statement of this revised paragraph should read:

“Every individual and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to and enjoy economic, political, social, cultural and environmental development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms”

**14. The revised suggestions to Article 5.2**

(1) The original text is:

“All peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue the realization of their right to development”

(2) Revised suggestions are:

a. deleting “they freely determine their political status and freely pursue the realization of their right to development”

b. after the deleting part, adding “countries have the right to combine the universality of human rights with their own national conditions, historical and cultural traditions and realistic levels of development, and to choose the paths and models of development that are conducive to realize the right to development in the light of national realities”

(3) The complete statement of this revised paragraph should read:

“All peoples have the right to self-determination, by virtue of which countries have the right to combine the universality of human rights with their own national conditions, historical and cultural traditions and realistic levels of development, and to choose the paths and models of development that are conducive to realize the right to development in the light of national realities”

**15. The revised suggestions to Article 6**

(1) The original text is:

6.1. States Parties reaffirm that all human rights, including the right to development, are universal, inalienable, interrelated, interdependent, indivisible and equally important.

6.2. States Parties agree that the right to development is an integral part of human rights and must be realized in conformity with the full range of civil, cultural, economic, environmental, political and social rights.

(2) Revised suggestions are:

a. amending “all human rights, including the right to development” to “the right to development and all other human rights”

b. amending “civil, cultural, economic, environmental, political and social rights” to “civil, political, economic, social and cultural rights”

c. adding “the realization of all other human rights must be contingent upon facilitating the realization of the right to development” after the last revision

(3) The complete statement of this revised paragraph should read:

6.1. States Parties reaffirm that the right to development and all other human rights are universal, inalienable, interrelated, interdependent, indivisible and equally important.

6.2. States Parties agree that the right to development is an integral part of human rights and must be realized in conformity with the full range of civil, political, economic, social and cultural rights, and the realization of all other human rights must be contingent upon facilitating the realization of the right to development.

**16. The revised suggestions to Article 8.2**

(1) The original text is:

“States Parties shall cooperate with each other in ensuring development and eliminating obstacles to development, encouraging full observance and realization of all human rights”

(2) Revised suggestion is:

Adding “through development” at the end of the para

(3) The complete statement of this revised paragraph should read:

“States Parties shall cooperate with each other in ensuring development and eliminating obstacles to development, encouraging full observance and realization of all human rights through development”

**17. The revised suggestions to Article 8.4**

(1) The original text is:

“States Parties recognize that each State has the right, on behalf of its peoples, and also the duty to formulate, adopt and implement appropriate national development laws, policies and practices in conformity with the right to development and aimed at its full realization. To that end, States Parties undertake to refrain from nullifying or impairing, including in matters relating to cooperation, aid, assistance, trade or investment, the exercise of the right and discharge of the duty of every State Party to determine its own national development priorities and to implement them in a manner consistent with the provisions of the present Convention and international law”

(2) Revised suggestion is:

Adding “finance, taxation” after “trade or investment”, in the sentence of “including in matters relating to cooperation, aid, assistance, trade or investment…”

(3) The complete statement of this revised paragraph should read:

“States Parties recognize that each State has the right, on behalf of its peoples, and also the duty to formulate, adopt and implement appropriate national development laws, policies and practices in conformity with the right to development and aimed at its full realization. To that end, States Parties undertake to refrain from nullifying or impairing, including in matters relating to cooperation, aid, assistance, trade or investment, finance, taxation, the exercise of the right and discharge of the duty of every State Party to determine its own national development priorities and to implement them in a manner consistent with the provisions of the present Convention and international law”

**18. The revised suggestions to Article 13.4 (i)**

(1) The original text is:

“Promoting the development, transfer, dissemination and diffusion of environmentally sound and human rights-compliant technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed”

(2) Revised suggestion is:

Amending “human rights-compliant technologies” to “the right to development-compliant technologies”

(3) The complete statement of this revised paragraph should read:

“Promoting the development, transfer, dissemination and diffusion of environmentally sound and the right to development-compliant technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed”

**19. The revised suggestions to Article 14**

(1) The original text is: Article 14 Coercive measures

(2) Revised suggestion is:

Amending the title of Article 14 from “Coercive measures” to “Prohibition of coercive measures”

(3) The complete statement of this revised paragraph should read:

Article 14 Prohibition of coercive measures

**20. The revised suggestions to Article 16.2 (b) and (d)**

(1) The original text is:

16.2 To that end, States Parties shall adopt appropriate measures, individually and jointly, inter alia:

(a) To prevent and eliminate all forms of violence and harmful practices against women and girls in the public and private spheres online and offline, including trafficking in persons and all forms of sexual and other types of exploitation;

(b) To ensure women’s full, equal, effective and meaningful participation and equal opportunities for leadership at all levels in the conceptualization, decision-making, implementation, monitoring and evaluation of policies and programmes in political, economic, social, cultural and public life, and within legal persons;

(c) To adopt and strengthen policies and enforceable legislation for the promotion of equality of opportunities and the empowerment of women and girls at all levels;

(d) To incorporate and mainstream a gender perspective into the formulation, adoption and implementation of all national laws, policies and practices and international legal instruments, policies and practices;

(2) Revised suggestions are:

a. amending “conceptualization, decision-making” to “formulation”, in Article 16.2 (b)

b. putting Article 16.2 (d) at the beginning as 16.2 (a), and adjusting the original sequence number of (a), (b), (c), (d) accordingly

(3) The complete statement of this revised paragraph should read:

16.2. To that end, States Parties shall adopt appropriate measures, individually and jointly, inter alia:

(a) To incorporate and mainstream a gender perspective into the formulation, adoption and implementation of all national laws, policies and practices and international legal instruments, policies and practices;

(b) To prevent and eliminate all forms of violence and harmful practices against women and girls in the public and private spheres online and offline, including trafficking in persons and all forms of sexual and other types of exploitation;

(c) To ensure women’s full, equal, effective and meaningful participation and equal opportunities for leadership at all levels in the formulation, implementation, monitoring and evaluation of policies and programmes in political, economic, social, cultural and public life, and within legal persons;

(d) To adopt and strengthen policies and enforceable legislation for the promotion of equality of opportunities and the empowerment of women and girls at all levels;

**21. The revised suggestions to Article 17**

(1) The original text is:

Article 17 Indigenous Peoples

(2) Revised suggestion is:

Adding a paragraph as Paragraph 1: “1. The international community and States parties shall take all necessary and possible measures to protect the right to development of indigenous peoples”

(3) The complete statement of this revised paragraph should read:

Article 17 Indigenous Peoples

1. The international community and States parties shall take all necessary and possible measures to protect the right to development of indigenous peoples.

2. Indigenous Peoples have the right to freely pursue their development in all spheres, in accordance with their own needs and interests. They have the right to determine and develop priorities and strategies for exercising their right to development.

3. In accordance with international law, States Parties shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

4. States Parties shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

**22. The revised suggestions to Article 18**

(1) The original text is:

Article 18 Measures to prevent and combat corruption

“States Parties recognize that corruption presents a serious obstacle to the realization of the right to development. To this end, States Parties shall, in accordance with international law, individually and jointly”

1. Revised suggestion is:

Adding “and the domestic laws of each country” after “international law”, in the sentence of “in accordance with international law” in the first para of Article 18.

1. The complete statement of this revised paragraph should read:

Article 18 Measures to prevent and combat corruption

“States Parties recognize that corruption presents a serious obstacle to the realization of the right to development. To this end, States Parties shall, in accordance with international law and the domestic laws of each country, individually and jointly”

**23. The revised suggestions to Article 19**

(1) The original text is:

Article 19 Prohibition of limitations on the enjoyment of the right to development

“States Parties recognize that the enjoyment of the right to development may not be subject to any limitations except insofar as they may result directly from the exercise of the limitations on other human rights applied in accordance with international law”

(2) Revised suggestions are:

a. deleting “may” in the sentence of “except insofar as they may result directly from the exercise of the limitations on other human rights…”

b. amending “they may result directly from the exercise of the limitations on other human rights applied in accordance with international law” to “they are imposed by exigent circumstances such as force majeure under international law”

(3) The complete statement of this revised paragraph should read:

Article 19 Prohibition of limitations on the enjoyment of the right to development

“States Parties recognize that the enjoyment of the right to development may not be subject to any limitations except insofar as they are imposed by exigent circumstances such as force majeure under international law”

**24. The revised suggestions to Article 20.1**

(1) The original text is:

Article 20 Impact assessments

20.1. States Parties undertake to take appropriate steps, individually and jointly, including within international organizations, to establish legal frameworks for conducting prior and ongoing assessments of actual and potential risks and impacts of their national laws, policies and practices and international legal instruments, policies and practices, and of the conduct of legal persons that they are in a position to regulate to ensure compliance with the provisions of the present Convention.

(2) Revised suggestion is:

Adding “In accordance with this Convention” before “States Parties undertake to take appropriate steps, individually and jointly”

(3) The complete statement of this revised paragraph should read:

Article 20 Impact assessments

20.1. In accordance with this Convention, States Parties undertake to take appropriate steps, individually and jointly, including within international organizations, to establish legal frameworks for conducting prior and ongoing assessments of actual and potential risks and impacts of their national laws, policies and practices and international legal instruments, policies and practices, and of the conduct of legal persons that they are in a position to regulate to ensure compliance with the provisions of the present Convention.

**25. The revised suggestions to Article 23**

(1) The original text is:

Article 23 Sustainable development

States Parties, individually and jointly, undertake to ensure that:

(a) Laws, policies and practices relating to development at the national and international levels are aimed at and contribute to the realization of sustainable development, in a manner consistent with their obligations under international law;

(b) Their decisions and actions do not compromise the ability of present and future generations to realize their right to development;

(c) The formulation, adoption and implementation of all such laws, policies and practices aimed at realizing sustainable development are made fully consistent with the provisions of the present Convention and other obligations for realizing sustainable development in international law.

(2) Revised suggestions are:

a. The provisions of this article are too simple and abstract, not refined enough;

b. The three paragraphs of this article are suspected of duplication;

c. There is no clear provision to realize the right to development through sustainable development;

d. In 23(b), the expression of “do not compromise the ability of present and future generations to realize their right to development” is too vague to be legally judged and measured. What exactly are future generations and what is their right to development? None of these can be definitively evaluated at the legal level.

(3) My comments are:

a. It should be refined according to the goals, tasks and indicators of sustainable development, as well as the content and requirements set out in the long-term planning for future development, such as the “2030 Agenda for Sustainable Development”;

b. Clarifying the meaning and function of sustainable development for the right to development and its specific modes of action;

c. Stipulating that States and the international community have the responsibility to act individually or collectively to ensure the realization of the right to development by promoting sustainable development.

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