



## **APWLD inputs on a draft legally binding instrument on the right to development**

The Asia Pacific Forum on Women, Law and Development (APWLD), a regional feminist organisation with consultative status with the UN Economic and Social Council (ECOSOC), welcomes the initiative to draft a legally binding instrument on the right to development.

This proposal comes at a time when multilateralism is becoming fractured, and the United Nations system is challenged on many sides by private sector influence, from the new partnership agreement with the World Economic Forum to the granting of observer status to the International Chamber of Commerce two years ago.

At the same time, globally there is a shortfall in democracy and rise in inequality, autocratic rule and attacks on human rights defenders, particularly environmental defenders as the climate crisis escalates. Despite the global commitment to achieving sustainable development for all, neocolonialism facilitated by capitalism has dominated not only economic but also political governance, and the reality of 'development' is far from what sovereign people of nation states imagined when the Declaration on the Right to Development was adopted in 1986. To substantively address this, there is a need for radical change and recognition of systemic barriers, a need to upturn the global economic order and redefine what is meant by development.

APWLD, along with 91 other civil society organisations has since 2013 advocated for a new framework for development that is centred around justice, accountability and people's sovereignty. This framework, termed Development Justice, requires five foundational shifts to take place to achieve the kind of development that is envisioned in the Right to Development Declaration. This is further detailed in our briefer defining each of the shifts, and our submission to the Special Rapporteur on the right to development during his regional consultations in 2018. This publication has examples of policies that help to fulfill the right to development and examples of what we define as Development Justice.

Responses to questionnaire:

### **Type of the instrument:**

1. Should the instrument be principally
  - a. a framework convention,
  - b. a treaty focusing on inter-state relations defining rights and obligations of States,
  - c. a treaty modelled on existing human rights treaties, defining the rights of individuals and peoples and corresponding obligations of States and non-state actors;
  - d. an instrument combining existing models of human rights treaties with inter-State rights and obligations; or**
  - e. another instrument or agreed outcome?

**We suggest that the instrument combine existing models of human rights treaties, to clearly state that the right to development is a fundamental human right, both individual and collective, to recognise and break historical power inequalities between countries. The inter-state obligations can enable effective state to state dispute settlement or complaints mechanism, and underline global solidarity and cooperation based on accountability.**

### **Content of the instrument:**

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1. Which previous instruments and provisions should be referenced in the preamble?  
**In addition to the nine core international human rights instruments and eight fundamental conventions adopted by the International Labour Organisation, we suggest to refer to:**
  - a. UN Declaration on the Right to Development
  - b. Rio Declaration on Environment and Development
  - c. Beijing Declaration and Platform for Action (BPfA)
  - d. UN Framework Convention on Climate Change (UNFCCC)
  - e. 2030 Agenda for Sustainable Development
  - f. UN Declaration on the Rights of Peasants and Other People Working in Rural Areas
  - g. UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
  - h. UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (aka Declaration on Human Rights Defenders)
  - i. Maastricht Principles on Extraterritorial Obligation of States in the Area of Economic, Social and Cultural Rights
  - j. Monterrey Consensus of the International Conference on Financing for Development
  - k. Doha Declaration on Financing for Development
2. Which considerations should be incorporated in the preamble?  
**Firstly, it is important for the preamble to recognise states as the principal duty bearers having the primary responsibility to create favourable conditions for the realisation of peoples' right to development. This includes ensuring active, meaningful and informed participation of the people in planning, monitoring and evaluation of development policies at the local and national levels. It should also stress recognition of the right to development as a fundamental human right of the people and hence emphasise the state obligation to promote, protect and fulfil the right to development, and being cognizant that this right cannot be achieved within a national territory and needs international solidarity and cooperation, including a global partnership for development. The preamble should acknowledge the historical unequal balance of power between states that is consolidated by the dominant neoliberal development model and system. This can include some points on how the right to development is compromised by sovereign or public debts and a lack of access to justice and remedies.**
3. How should the object and purpose of the instrument be formulated?  
**To defend people's right to development as a fundamental human right and freedom, to advance states' human rights obligations and accountability to the people as the basic social contract for nation states, end conflicts, invasions, occupations and wars over resources, create an environment where people can make decisions on their lives and livelihoods, ensure access to justice and remedies when the right to development is violated, including state to state complaint mechanisms or direct case against member states by individuals.**
4. Which elements should be included in the instrument and how should it be structured?  
**The structure should start with the understanding that peoples should be at the centre of development, and build on to recognise communities' right to development, and in how they express it. The consideration of the principle of international solidarity, and the principles on Common But Differentiated Responsibilities (CBDR as formalised in the UNFCCC) are key. The instrument should incorporate an understanding that communities are upholding their right to development when they express their concerns or opposition to destructive projects or policies, ranging from infrastructure projects that displace communities, to fossil fuel energy strategies that are destructive to the environment and incompatible with need to act in the face of the climate crisis. Communities should not**



be dictated to and pressured to make sacrifices for an undefined idea of national development that they are not included in.

5. Which duty bearers, in particular non-state actors, should be included?

**This instrument may address non-state actors that make it difficult to realise the right to development, such as corporations with a transnational character. However in all language addressing non-state actors, it must be emphasised that States are the primary duty-bearers and as such they are the ones who have to ensure regulation of non-state actors, including corporations, private security forces, and others who are often the direct perpetrators of human rights violations, but with the silence and complicity of the state.**

6. Which obligations should the instrument concretize?

**State obligation to enact national and local legislation to realise peoples' right to development; State obligation to protect people from the negative impacts of private and business activities, especially marginalised and oppressed groups. Obligations to concretise should include the right to a healthy and safe environment, access to justice and remedies, free, prior and informed consent (FPIC), the necessity of human rights, gender and environmental impact assessments (whether ex-ante, periodic and post) on any economic or development policy, and based on that assessment, the obligation to withdraw or annul any agreement that violates the right to development or other fundamental human rights. For example, the direct threat of the Investor-State Dispute Settlement (ISDS) mechanism to national and people's sovereignty, right to development and human rights, should mean that States annul trade agreements that have provisions such as ISDS or amend them so that human rights including right to development have primacy.**

**Going beyond the nation state, it must also concretise extraterritorial obligations, accountability for the Global North countries for creating inequalities historically, ranging from resource control to pollution and contribution to emissions that has created the climate crisis.**

How should the relationship with other rights and obligations under international law be determined?

## Institutional arrangements:

1. What type of institutional arrangements should be foreseen?
- A conference of State Parties with subsidiary bodies?
  - An expert body with the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments?**

**We suggest option b is the better institutional arrangement.**

2. Which entity should serve as the Secretariat?

**OHCHR**

3. Should there be a funding mechanism for covering the costs of the institutional arrangements and implementing recommendations?

**Yes.**

## Compliance, monitoring and enforcement arrangements:

1. What type of compliance, monitoring and enforcement procedures should be envisaged?
- A compliance committee with a facilitation and enforcement branch?
  - A reporting procedure with periodic reports, reviewed by an expert body? Support creating a new reporting procedure, which may act as a supplement or balance between the CPR and ESCR committees.**
  - A self-assessment combined with a peer review mechanism?
  - A communications procedure?
  - An inquiry procedure?



- f. **An inter-State complaints procedure? Support such a procedure, given the power inequalities between countries.**
- g. An advisory opinion procedure?
- h. Should some procedures be optional and if, should the procedures be included in the text of the instrument in the form of an opting in or opting out clause or in an optional protocol?  
**Would ideally not have an opting out clause.**
- i. How should the relationship with other relevant procedures and mechanisms be determined?  
**It should help strengthen the work of the treaty bodies and the Human Rights Council, as already the existing mechanisms are overburdened and this potential expert body could allow more monitoring of important issues.**

## Final provisions:

1. What elements should be specified in the final provisions?
  - a. Who can become a party to the LBI?
  - b. What is the desired number of ratifications for entry into force?  
**20**
  - c. Should reservations be possible?  
**No**
  - d. Should there be a clause on dispute resolution with respect to the interpretation or application of the instrument with jurisdiction of the International Court of Justice?  
**From our perspective this should be a yes; as it will facilitate violations of the right to development to be brought under the ICJ.**
  - e. Should there be a clause concerning the possibility to denounce the agreement?  
**The clause could specify that parties can withdraw, but are asked not to denounce the instrument.**