



**INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH ASIA PACIFIC [378811 X]**

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**Submission by IWRAW Asia Pacific to the call for inputs on a draft legally binding instrument on the right to development by the Intergovernmental Working Group on the Right to Development**

**International Women's Rights Action Watch Asia Pacific (IWRAW AP)** welcomes the opportunity to provide its critical response and contribution to the Open-ended Intergovernmental Working Group on the Right to Development (hereafter "Working Group").

We commend the Working Group for prioritising the realisation of the right to development discourse during a very critical time given the global focus on the implications of the 2030 Agenda for Sustainable Development. This is a welcome opportunity to strengthen and create normative coherence around the framework on right to development.

The right to development is recognised and well established in various international human rights and development frameworks, such as the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Right to Development, the Declaration on the Rights of Indigenous Peoples, and the Sustainable Development Goals. There are existing processes to advance the realisation of the right to development, such as the High Level Political Forum on Sustainable Development (HLPF), treaty bodies and other Special Procedures. We are particularly concerned about developing an additional framework when the SDGs are still too new to deliver on their promises, and about creating a costly structure when the UN is already facing financial shortfall.

The right to development is inalienable and cuts across all existing human rights treaties. Therefore, we would like to urge the Working Group to leverage already existing mechanisms by synthesising the elements of the proposed legally binding treaty into existing frameworks and mandates, rather than creating a standalone separate instrument and institution, as the delivery of human rights outcomes requires structural and institutional coherence and prioritisation.

**We want to recommend the following alternative steps in order to strengthen the normative framework and fill procedural gaps for the realisation of the right to development:**

- Updating the existing Declaration on the Right to Development to reflect the current context and emerging issues (see below for IWRAW AP's contextual analysis)
- Analysing and filling the gaps in existing instruments concerning the right to development
- Incorporating new and emerging areas/subjects through treaty-body general comments

- Cross-referencing already existing mechanisms and frameworks to ensure heightened normative standards and outcomes across the board
- Clarifying the implementation of legal obligations through the treaty body processes
- Strengthening the accountability framework in relation to business activities, particularly when conducted extraterritorially
- Putting the right to development at the center stage of the UN General Assembly's agenda
- Leveraging the Voluntary National Reviews (VNR) and HLPF processes
- Strengthening collaboration among different mechanisms such as the Universal Periodic Review, HLPF and treaty bodies

**We want to draw the Working Group's attention to our critical analysis about the dominant narrative of right to development**

The world today is faced with the difficult task of determining an optimal mix of realising '**people-centered**' development and achieving '**planet-centered**' justice. An obstacle to the realisation of the right to development is the dominant perspective and paradigm of development itself, which is premised on neoliberal economic systems of production and consumption. The problem is so deeply entrenched in the global economic and political system that it is becoming next to impossible to break this cycle of exploitation of environment and labour.

The hegemonic development models promoted through colonisation and reinforced through capitalism by the 'developed' countries in the Global North crushed the centuries-old local and indigenous knowledge and community practices of human and social development. Growth-based development policies, conditionalities of development aid, and financing institutions generally disregard the majority population, increasing income inequality within and between countries, and leaving 'poor' and 'underdeveloped' countries submerged in debt and dependency. The communities that have interfaced with this model of 'development' are more vulnerable than those that have not. Consequently, there is a dire need to balance the power and benefits of development aid and investments.

The current and problematic notion of the right to development – focused on market economies and infrastructural development in lieu of **human and social development and environmental justice** – must shift. Development at the cost of environmental and labour exploitation is not sustainable. The right to development should emphasise environmental justice and promote rather than erode the rights of people.

There is also a need to shift our thinking in relation to the concept of 'natural resources', as it awards economic value to the environment and establishes people's power over nature to exploit it unconditionally. If we do not change our production, consumption and convenience patterns, the sustainable development aim of 'leaving no one behind' might end up 'leaving nothing behind'.

The **instrumental gender approach** in the development discourse, as promoted by International Financial Institutions (IFIs), is a serious point of departure from the rights-based approach. Although IFIs identify gender equality as an important goal of development, the stated purpose of achieving gender equality is to promote economic growth – viewing gender equality as an instrument rather than as a goal in and of itself.

**We want to draw the Working Group's attention to some conceptual gaps in the Declaration on the Right to Development (hereafter "Declaration")**

"Effective measures should be undertaken to ensure that women have an active role in the development process", as mentioned in Article 8 (1) of the Declaration, doesn't comply with the human rights-based approach and sees women as instrumental actors in the development process, but not as the beneficiaries of the results. Further, by viewing women in this instrumentalist fashion, these development policies fail to address the social constructs and power

dynamics at the root of gender hierarchies – they fail to address the exploitation and over-representation of women in the informal sector and the invisibility of unpaid care work.

“Equality of opportunity” provisions, as mentioned in Article 8 (1) of the Declaration, may not bring about real equality for women and other disadvantaged groups, communities and countries, as inequalities and social hierarchies may simply be reproduced in the labour force/productive sphere. On the other hand, the **substantive equality approach** is concerned with the equality of opportunity, equality of access to opportunity and – most importantly – equality of results. Therefore, any new frameworks on the right to development should recognise substantive equality for the practical realisation of the right to development.

The existing Declaration on the Right to Development, Article 4, states that “sustained action is required to promote more rapid development of developing countries.” This fails to understand the meaning of sustainable development, and inherently contradicts the **spirit of ‘sustainable development’**. If development is rapid, how will it be sustainable? Who gets to decide the ‘pace’ of development? Who is going to benefit from such development practices? These are some of the hard questions that the future discourses and frameworks on the right to development should try to answer.

**Therefore, we urge the Working Group to consider the following recommendations in any present/future discourse, frameworks and action concerning the right to development:**

1. It is important to acknowledge the negative impacts of development policies and actors in the realisation of the right to development. As this right is hugely impacted by the acts and omissions of business actors, particularly transnational corporations involved in mega infrastructure projects, stronger elaboration is needed to address the **accountability deficit of business actors and IFIs** whose policies and actions are non-transparent, with few opportunities for review or remedy. Trade agreements often create a further obstacle to the ability and sovereignty of states to maintain legal frameworks that ensure legal protections of the rights of communities and people.
2. The right to development is not just a process/tool to facilitate other human rights, but it is in itself an inalienable human right. **Legal frameworks** should establish the ‘right to development’ as a claimable constitutional right with legal remedies.
3. The prevalent rhetoric surrounding gender in development must comply with a human rights-based approach. Development initiatives for gender equality must not only focus on the symptoms but on the root causes of **gender inequality**.
4. In line with the spirit of SDGs ‘leaving no one behind’, any existing or new framework should recognise and address the **disproportionate development needs and rights** of different communities and people(s) – including, but not limited to, small farmers, fisher communities, labour unions, public interest groups, consumer associations, indigenous groups – and ensure that they benefit equally from the development processes.
5. Corporate and political interests should not shape development policies and priorities. States must ensure effective consultation with the public before designing and implementing any financial, economic and trade policies or development programmes. States must also secure **the free, prior and informed consent** of communities who are or will be impacted by such policies, programmes and projects. It is the responsibility of the States to ensure participatory monitoring and evaluation, particularly for trade, investment, finance and infrastructure policies through mechanisms such as human rights and environmental impact assessments.