

Contribution of International Women's Rights Action Watch Asia Pacific

The Chair-Rapporteur of the Intergovernmental Working Group on the Right to Development has been requested by the Human Rights Council, in its resolution 39/9, to prepare a draft legally binding instrument on the right to development.

We therefore invite you to share your views and proposals on a draft legally binding instrument on the right to development, including on the following:

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?

A framework convention combining existing models of human rights treaties with inter-State rights and obligations.

Content of the instrument:

1. Which previous instruments and provisions should be referenced in the preamble?

- All Human Rights treaties and related general comments should be referenced, with a particular focus on ICESCR General Comments 4 and 24, on the Right to Adequate Housing and on Business Activities, respectively, as well as CEDAW General Recommendation 34 on the Rights of Rural Women.
- The state duty to protect against human rights abuses by third parties highlighted in the UN Guiding Principles on Business and Human Rights;
- The Sustainable Development Goals
- The UN Declaration on the Rights of Indigenous Peoples;
- The Beijing Platform for Action's Declaration on the Right to Development
- Regional human rights frameworks, particularly the African Charter on Human and Peoples' Rights (the Banjul Charter).
- Relevant ILO conventions, such as C169 on Indigenous and Tribal Peoples, C176 on Safety and Health in Mines, C141 on Rural Workers' Organizations
- Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Paris Agreement on climate change

2. Which considerations should be incorporated in the preamble?

- The current neoliberal economic systems of production and consumption

that frame the development context severely impede the realisation of the right to development. This RtD agenda must therefore be approached innovatively to disrupt entrenched hierarchies of wealth in the world-system and achieve genuine development.

- People(s) must not be sacrificed for the realization of development agendas. Rather, the goal of development must be to facilitate the rights of people(s).
- Development should incorporate a concept of social and redistributive justice. Development must therefore be understood not only as economic and infrastructural development, but through concepts of human and social development, such as life expectancy, education, and per capita income. Development must be measured not merely by a concept of growth, but by a reduction in inequality.
- Development agendas must not neglect children and future generations' right to development. Development agendas must therefore incorporate concepts of climate justice—promoting a circular economy by minimizing waste and maximizing resources.
- Development must be approached within the context of militarism, which presents a great obstacle to sustainable development. Disarmament must therefore be incorporated into the development agenda.

3. How should the object and purpose of the instrument be formulated?

- The object and purpose of the RtD instrument is to rebalance and reorder the existing economic system by asserting a corrective approach to development. Its provisions must be interpreted and applied so as to safeguard the rights of persons, peoples, and the planet.
- RtD must be read in light of all other rights outlined in both ICESCR and ICCPR
- Development is both an individual and a collective right.
- Development agendas must recognise and address the varying needs and rights of different communities, particularly marginalized communities.
- Development initiatives that affect indigenous peoples' ancestral land or resources must ensure free, prior and informed consent (FPIC) from the affected indigenous communities.
- The treaty should be read in light of the understanding that development must be people-led.
- Community-involvement in the design of development projects is imperative.
- RtD should radically shift current models of development focused on megaprojects and large-scale infrastructural redevelopment, in which global south economies make the least gains in the global value chains.
- A greater balance must be struck between states and institutions financing development projects and states receiving development aid--conditional aid and debt dependency should no longer be business as usual.
- Women should be included in development plans, and should reap the benefits of development.
- The RtD must balance the needs of the people and the planet, as it incorporates both the rights of current generations with the rights of future generations.
- Development must be approached within the context of global migration, militarism, technology and artificial intelligence and the increasing trend of gig economy.

4. Which elements should be included in the instrument and how should it be structured?

- The treaty should enshrine the RtD as a legal, claimable, and justiciable right that is fundamental to all persons and peoples.
 - The instrument should ensure an accountability framework for the right to development, incorporating both a mechanism to measure compliance, as well as a mechanism for sanctions in the event of noncompliance.
 - In measuring compliance, development indicators should focus not only economic growth, but on human and social development—indicators such as HDI and GINI should be utilized.
 - Elements should include: FPIC, gender equality, people-led development (see section above).

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

- Business actors, particularly multinational corporations, infrastructure developers, contractors, real-estates;
- International Financial Institutions such as the World Bank, the International Monetary Fund, Asian Development Bank
- Foreign direct investors and investment state dispute settlement (ISDS) mechanisms
- World Trade Organisation (WTO) and World Economic Forum
- UN agencies such as United Nations Development Programme, United Nations Conference on Trade and Development

6. Which obligations should the instrument concretize?

- The instrument should concretize the human rights obligations of states to respect, protect, promote and fulfil the right to development;
- Due diligence: the State responsibility to investigate, prosecute and punish violations of human rights caused by non-state actors.
- Minimum core obligations are vital in the realisation of the right to development. Although States are expected to progressively move towards fulfilment of the right to development, they concurrently have minimum core obligations in relation to human rights and social development which must be met immediately, such as the right to essential primary healthcare, food, basic shelter and education.
- The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights
- Obligation to regulate non-state actors - remedies must be more comprehensive, assurance on non-recurrence of violation, should not just be about 'do no harm'
- Obligation to safeguard the rights of non-citizens
- Other key obligations defined by binding treaties

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

- Harmonization of normative standards
- Fulfilling the gaps in existing relevant standards in relation to the RtD
- Borrowing from better/higher standards

- (national/regional/international) eg Banjul Charter
- Harmonization of existing mechanisms and procedures eg special procedures, treaty bodies

Institutional arrangements:

1. What type of institutional arrangements should be foreseen?

1. A conference of State Parties with subsidiary bodies?
 2. An expert body with the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments?
- It is not clear how a RtD mechanism would provide a tangible benefit to the HR system, and we would like to point out that a multiplicity of instruments and mechanisms is a concern. Existing frameworks like SDGs and legal obligations are already clarified through treaty body processes. In light of this, we advise incorporating the RtD into existing mandates rather than creating a separate institution/mechanism. More specifically, the RtD mechanism should be integrated into existing mechanisms such as Treaty Body reviews, the UN High Level Political Forum on Sustainable Development, and Universal Periodic Reviews and should be placed at the center stage of the GA's agenda.

2. Which entity should serve as the Secretariat?

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?

1. A compliance committee with a facilitation and enforcement branch?
2. A reporting procedure with periodic reports, reviewed by an expert body?
3. A self-assessment combined with a peer review mechanism?
4. A communications procedure?
5. An inquiry procedure?
6. An inter-State complaints procedure?
7. An advisory opinion procedure?
8. 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?
9. How should the relationship with other relevant procedures and mechanisms be determined?

Combination of 1 (specialised committee at the GA level),4,5,6,7

Final provisions:

1. What elements should be specified in the final provisions?

1. Who can become a party to the LBI?
All UN Member
2. What is the desired number of ratifications for entry into force?
20

3. Should reservations be possible?

No

4. 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?

Yes

5. Should there be a clause concerning the possibility to denounce the agreement?

No