



### Call for inputs:

#### Views and proposals on a draft legally binding instrument on the right to development

**Contribution by Associazione Comunità Papa Giovanni XXIII (APG23), Istituto Internazionale Maria Ausiliatrice - Salesians Sisters of Don Bosco (IIMA), MIAMSI, New Humanity, Teresian Association and International Volunteerism Organization for Women, Education, Development (VIDES International), NGOs belonging to the Working Group on the Right to Development of the Catholic Inspired NGOs (CINGO) Forum in Geneva.**

In reply to the call of the Chair of the Open-Ended Intergovernmental Working Group on the right to development, Mr. Zamir Akram, to provide views and proposals on a draft legally binding instrument on the right to development, APG23 submits this contribution on behalf of the following organizations belonging to the Working Group on the Right to Development of the Catholic Inspired NGOs of the Geneva forum: Associazione Comunità Papa Giovanni XXIII (APG23), Istituto Internazionale Maria Ausiliatrice - Salesians Sisters of Don Bosco (IIMA), MIAMSI, New Humanity, Teresian Association and International Volunteerism Organization for Women, Education, Development (VIDES International).

In occasion of the 20<sup>th</sup> session of the OEIWG, we sent a contribution explaining the reasons why we support the idea of drafting a legally binding instrument on the right to development<sup>1</sup>. In that submission, we also expressed the hope to be engaged in the process and the desire to actively contribute to it bringing the perspective of those left behind with whom we are engaged at grass-root level. Therefore, we thank very much the Chair, Mr. Zamir Akram, for giving us the opportunity to do so.

Our answers to the questions of the Chair are as follows:

#### 1. Type of the instrument:

Most probably, a Framework Convention on the Right to Development that will reaffirm the Declaration and provide an opportunity to clarify the contemporary understanding of some of its provisions, followed then by one or more optional protocols or a set of guidelines for implementation, maybe the most adequate option to accommodate the concerns of different political groups and gather a larger consensus, as it allows for a step-by-step approach and will set just general obligations.

**Nevertheless, bearing in mind the poorest of the world for whom the implementation of the right to development is very relevant, crucial and urgent, we found that, among all the options submitted in the point 1, the one fitting more but not completely is the option C, taking into consideration that a convention of the Right to Development cannot be completely tailored on the existing models.** However, it is possible to start from these

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<sup>1</sup> [https://www.ohchr.org/Documents/Issues/Development/Session20/NGO\\_1.pdf](https://www.ohchr.org/Documents/Issues/Development/Session20/NGO_1.pdf)

models, to create something more specific. The right to Development is an individual and collective right, and the convention should respect this duality. Moreover, the obligations are not only pertaining to States but also other stakeholders. Having a convention with more specific obligations will make those States ratifying it, obliged to implement the contents of the convention and subjected to report regularly to the established monitoring mechanisms including the Universal Periodic Review.

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

#### ***2. Which previous instruments and provisions should be referenced in the preamble?***

The content of the instrument in the Preamble may include the following:

1) A specific reference to the legal mandate that led to the formulation of this legally binding instrument as a fundamental step towards the implementation of the overarching mandate for the open-ended intergovernmental working group on RTD.

2) Reaffirming existing relevant international legal instruments such as:

- United Nations Charter
- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Rio Declaration on Environment and Development, 1992;
- Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993;
- United Nations Framework Convention on Climate Change, 21 March 1994;
- Copenhagen Declaration on Social Development (A/CONF.166/9, 14 March 1995);
- United Nations Millennium Declaration, Resolution 55/2 adopted by the General Assembly in September 2000;
- Programme of Action for the Least Developed Countries for the Decade 2001-2010;
- Monterrey Consensus, Mexico 2002;
- Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024;
- Doha Declaration on Financing for Development: Outcome Document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, 2008;
- Addis Ababa Action Agenda - International Conference on Financing for Development, July 2015;
- A/RES/70/1; Transforming our world: the 2030 Agenda for Sustainable Development;
- Declaration on the right to peace (2016) and Declaration on the Rights of Peoples to Peace (1984);
- Un Declaration on the Rights of Indigenous Peoples;

3) Bearing in mind other regional instruments that recognize the right to development such as the Charter of the Organization of American States (1948), the African Charter on Human and Peoples ' Rights (1981), the Arab Charter on Human Rights (2004), the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration 2012 and the Abu Dhabi Declaration (2016)

- 4) Reaffirmation of - and relationship with - the other Conventions (the Convention on the Rights of the Child, the Universal Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of People with Disabilities) that in their preamble and articles include the principles and contents of the Declaration on the right to development.
- 5) Reaffirmation of the Human Rights Council Resolutions on RTD;
- 6) A reminder of all relevant Resolutions and decisions adopted at the UNGA, HRC, Treaty bodies, and other relevant intergovernmental organizations on Right to development and /or contents of the DRTD;
- 7) A particular reference to article 28 of UDHR
- 8) A particular reference to articles 55 and 56 of the UN Charter on international cooperation
- 9) Reference to the Declaration of the Right to Peace (GA resolution 2016)
- 10) A reference to the UN Guiding Principles on Business and Human Rights
- 11) Reaffirmation that State Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States, and that nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law;
- 12) A reminder that International Organizations shall not adopt or promote any international norm or decision that could limit the achievement of the purpose and objectives of this legally binding instrument, as well as the capacity of the Parties to fulfill their obligations adopted herein.
- 13) **Principles** – all principles of the Declaration of the RTD should be mentioned in the preamble plus the principles of the international human rights law and the United Nations.

#### **Principles of the DRTD:**

- ⊙ Person/People-centred Development (preamble, art. 2.1, 2.2)
- ⊙ Integral/comprehensive development (Preamble, art.1.1)
- ⊙ Participation (Preamble, art 1.1, 8.2)
- ⊙ Self- determination/sovereignty of natural wealth and resources (Preamble, art. 1.2)
- ⊙ Indivisibility and respect for Human Rights (preamble, art. 6.2)
- ⊙ Responsibilities of States at the national and international level for an enabling environment (preamble, art. 2.3, 3.1,3.2,3.3, 4.1, 4.2, 6.3)
- ⊙ Elimination of obstacles/Social justice (preamble, art. 6.3)
- ⊙ New international order and international cooperation (preamble, art.3.3, 4.2, 6.1)
- ⊙ Non- discrimination/equality of opportunities/equity (preamble, art.8)
- ⊙ Indivisibility of DRTD (art. 9.1, 9.2)
- ⊙ Peace and Security /Disarmament (preamble, art. 7)
- ⊙ The active role of women in development (preamble, art.8)

And

- 1) Universality, indivisibility, interdependence, and inter-relationship of all human rights which therefore must be treated in a fair and equal manner, on the same footing and with the same emphasis;
- 2) General obligation to respect, promote and protect all human rights and fundamental freedoms at the national and international level and conducted without conditions attached;
- 3) The primary responsibility of the State to protect against human rights violations or abuses within the family, their territory, and/or jurisdiction by third parties;

- 4) Recognition of the primacy of human rights obligations over trade and investment agreements;
- 5) Reference to the principle of international solidarity
- 6) Respect of the principles of sovereign equality and territorial integrity of States and nonintervention in the domestic affairs of other States;
- 7) Observance of domestic laws, regulations and administrative practices;
- 8) General obligation of international cooperation;
- 9) Accountability and transparency.

### ***3. Which considerations should be incorporated in the preamble?***

It is important that the preamble reaffirms the centrality of the person and the respect of his/her inherent dignity; that development, as comprehensively defined in the UN declaration, should be integral and must encompass all the dimensions including the spiritual dimension of the human being; that ecological integrity demands respect and preservation of the environment so as to meet the needs of the present and future generations; that peace and security are essential elements for the realization of the RTD and that RTD is a right of individuals and peoples.

### ***4. How should the object and purpose of the instrument be formulated?***

The object and purpose can be put in an article entitled “**Statement of purpose**” where it can be stated that the purpose of this legally binding instrument is “to create an international legally binding instrument that aims to guarantee the effective realization and implementation of RTD for the respect, promotion and protection of all human rights.

### ***5. Which elements should be included in the instrument and how should it be structured?***

The instrument can be structured as follows:

#### **Preamble**

**Section I** - Art.1 definitions; art. 2 Statement of purpose; art. 3 Scope;

**Section II** - Articles (# ?) with the main content and obligations

**Section III** - Institutional Arrangements: Implementation; relations with protocols; settlement of disputes; Signature, Ratification, Acceptance, Approval and Accession; Entry into force; Amendments; Reservations; Denunciation; Depository and Languages.

**The content** of the instrument in **section II** may include the following elements:

**Development** is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of human well-being and the **right to development** is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

**Person/People-centered development:** “The human person” is the central subject, participant, and beneficiary of development

**A human rights-based approach:** Development should be carried out in a manner “in which all human rights and fundamental freedoms can be fully realized”

**Right of peoples to self-determination** including full sovereignty over all their natural wealth and resources

**Participation:** “Active, free and meaningful participation” of all individuals and peoples

**Non-discrimination:** “No distinction as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.

**Equity:** “Fair distribution of the benefits” of development

**Equality of opportunity** for development is a prerogative for both nations and individuals who make up nations

Like all human rights, the principles of equality, non-discrimination, participation, accountability, and transparency are intrinsic to the RTD

**Other contents are:** Acts subject to its application; 1) Actors subject to its application; 2) Obligations of States; 3) Obligations of International Organizations and Non-State Actors 4) International Cooperation 5) Extraterritorial obligations.

States must act to eliminate human rights violations of all forms

States should promote international peace and security and disarmament and use released resources for development

States have a duty to cooperate to create an enabling local and global environment for development and to eliminate obstacles to development

The RTD requires appropriate national and international development policies and an enabling social and international order to realize all rights and freedoms

## **6. Which duty bearers, in particular non-state actors, should be included?**

The DRTD says in article 2:

*2. 2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should, therefore, promote and protect an appropriate political, social and economic order for development.*

*2.3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.*

Therefore, the duty bearers are, in our understanding of the Declaration, as follows:

States and non-State actors such individuals and group, private sector, national, multinational and transnational companies, international financial institutions (such as World Bank, WTO, IMF that condition development with their policies).

- States have the primary responsibility to respect, protect and fulfill the RTD at three levels (A/HRC/15/WG.2/TF/2/Add.2.):
  - i) Internally through national policies and programs
  - ii) Internationally, through policies extending beyond their jurisdictions
  - iii) Collectively, through global and regional partnerships
- International Community
- All human beings, and all those whose actions and/or omissions have an impact on development and human rights and on the environment in which these rights are fulfilled.

### **7. Which obligations should the instrument concretize?**

- Obligations of States at the national level
- Obligations of States at the international level
- Extraterritorial obligations
- Obligations of other non-states actors

Moreover, ART. 7 of the DRTD affirms “All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.”

This article should be emphasized in the section related to obligations.

### **Institutional arrangements:**

### **8. What type of institutional arrangements should be foreseen?**

- A Conference of States parties (every two years)
- A body (Committee) of independent experts of high moral standing, recognised competence in the field covered by the Convention such as human rights, international law and right to development (12 or maximum 18), elected by States Parties with secret ballot from among their nationals and serving in their personal capacity for a period of 4 years (renewable). In choosing the experts, consideration should be given to equitable geographical distribution, gender balance as well as to the principal legal systems. The Experts will have the mandate to submit reports on its work to the General Assembly, adopt recommendations, views and general comments.

### **9. Which entity should serve as the Secretariat?**

The Secretary-General through the Office of the High Commissioner on Human Rights at the central and regional level.

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

We do not know, but, if possible, yes.

**Compliance, monitoring, and enforcement arrangements:**

***11. What type of compliance, monitoring and enforcement procedures should be envisaged?***

We opt for answer **b**): A reporting procedure with periodic reports, reviewed by an expert body.

***a. How should the relationship with other relevant procedures and mechanisms be determined?***

The convention can have an article that says that States ratifying this convention are obliged to present a periodic report to an expert body and to include systematically in their UPR report and in the reports related to the other ratified treaty bodies, the implementation of the RTD.

**Final provisions:**

***12. What elements should be specified in the final provisions?***

***a. Who can become a party to the LBI?***

All States, regional integration organizations and some non-State actors such international institutions.

***b. What is the desired number of ratifications for entry into force?***

The Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

***c. Should reservations be possible?***

YES, but not those incompatible with object and purpose of the instrument

***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?***

Yes, it can be good to have it; it can be a specific article on "Settlement of disputes"

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

A clause on denunciation is usually contemplated in the other conventions, therefore, it can be also included in a legally binding instrument on RTD.