**24th Session of the Working Group on the Right to Development (15-19 May 2023)**

**Overview of the Comments and Textual Suggestions on the Draft Convention**

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Your Excellency Ambassador Akram, Chair-Rapporteur of the Working Group on the Right to Development, Distinguished delegates, Ladies and Gentlemen,

Let me at the outset express my gratitude to the Chair-Rapporteur and the OHCHR for the continued trust reposed in me for chairing the group of international experts tasked with preparing the second revised draft of the Convention on the Right to Development.

I would like to begin by setting out the context for our discussions during the next four days on the elaboration of the draft convention on the right to development, so that the collective objectives we seek to realize from this exercise are spotlighted.

It may be recalled that the process for the elaboration of this draft legally binding instrument on the right to development was initiated by virtue of the Human Rights Council’s Resolution 42/23 of 27 September 2019, wherein the Council requested the Chair-Rapporteur to submit a draft legally binding instrument at the 21st session of the Working Group. Following these requests, the Chair-Rapporteur requested the OHCHR, to provide him with requisite support in the implementation of this mandate. The OHCHR, in agreement with the Chair-Rapporteur, established a drafting group, composed of five recognized experts in the field of international law and with due respect to equitable gender and geographical representation, with the objective to draft a legally binding instrument, including commentaries. The drafting group thus established comprised myself as its Chair and Rapporteur, as well as Professors Makane Mbengue from Senegal, Koen de Feyter from Belgium, Diane Desierto from the Philippines and Judge Margarette May Macaulay from Jamaica. I was mandated with the preparation of a first draft of the treaty with detailed commentaries.

Since the outset, the expert drafting group and the Chair-Rapporteur, have adopted an open, transparent, consultative, and collaborative approach to the process. This participatory approach is in line with one of the core principles of the right to development, that is, the right to participate in and contribute to development. Even prior to commencing the drafting process, a detailed questionnaire was issued by the OHCHR to all stakeholders – States, regional groups, UN specialized agencies and other IGOs, NHRIs, NGOs, special procedures, and academics. Based on those inputs, and pursuant to extensive deliberations within the expert drafting group, an initial draft was prepared along with exhaustive commentaries and shared with ten external experts for their comments. Following the necessary revisions, the drafting group submitted the “zero draft” of the convention and the accompanying commentaries – to the Chair-Rapporteur on 9 December 2019. The Chair-Rapporteur of the Working Group subsequently reviewed and endorsed the draft convention on the right to development. The draft convention, and the accompanying commentaries, were published in January 2020.

The zero draft was first considered by this Working Group at its twenty-first session held from 17 to 21 May 2021. All statements and suggestions, oral and written, made by participants during the session were recorded. In addition, all stakeholders were requested to submit their written concrete comments and recommendations for modification to the zero draft after the session. On 18 June 2021, the OHCHR issued a call inviting all stakeholders to submit comments and textual suggestions on the draft convention by the deadline of 20 August 2021. In response to this call, numerous contributions were received in the form of written responses. These were compiled article-by-article and published prior to the 22nd session of this Working Group held in November 2021. At this session, the zero draft was reconsidered in the light of the compilation of suggestions and comments made.

Once again, all statements and proposals made by participants during the 22nd session, orally or in writing, were recorded. A call for inputs was thereafter again issued by the OHCHR so as to facilitate a first revised draft of the convention. Following this process, the expert drafting group considered all the suggestions received and prepared a first revised draft of the convention which was endorsed by the Chair-Rapporteur. In addition, detailed commentaries on the consideration of each suggestion received on every single article were prepared and published. In keeping with the objective of a transparent and accessible process, a compilation of all the suggestions and comments received were also prepared and published.

The first revised draft of the convention was then considered by this Working Group at its 23rd session held in May 2022. The same open and participatory process was followed. All oral and written statements and recommendations for modification of the text were recorded.

Following the conclusion of the 23rd session, the Expert Drafting Group met on 19 and 20 September 2022 to consider all the written and oral comments and textual suggestions received on the first revised draft. The Chair-Rapporteur of the Working Group attended the meeting and shared his observations on the comments and textual suggestions and provided further guidance to the drafting group. On the last day of the in-person meeting, on 20 September 2022, the drafting group adopted the draft text ad referendum. On 4 October 2022, on behalf of the drafting group, I submitted the second revised text of the draft convention together with commentaries to the Chair-Rapporteur of the Working Group. The Chair-Rapporteur subsequently reviewed and endorsed the second revised text of the draft convention on the right to development.

The second revised draft convention reflects the deliberations of the Expert Drafting Group on the submissions from States, agencies and other specialized bodies within the United Nations, international organizations, NHRI’s, civil society organizations, and special procedures. All submissions were extensively considered and deliberated upon by the drafting group before revisions were undertaken. Every attempt has been made to ensure that any substantive revisions are strictly grounded on, or consistent with, international law and applicable international law jurisprudence.

As with the first revised draft, the expert drafting group’s deliberations with respect to elaboration of the second revised draft were guided by the following three considerations.

(a) Proposed revisions or amendments that strengthened and improved the text, consistently with international law, were accepted. Recommendations that ultimately weakened the text due to inconsistency with international law, or by introducing further challenges to the effective implementation of the draft Convention, were cautiously reviewed and scrutinized by the EDG.

(b) Proposed revisions that repeated or duplicated provisions in the draft Convention were not accepted. Any proposed revisions that would be contrary to existing international law or would potentially result in a conflict or outright breach of existing international law were avoided.

(c) Proposed revisions that sought contextual elaboration of the draft Convention text were noted for possible inclusion in the commentaries to the second revised draft convention. Only suggestions that were relevant to the context of the provision concerned were accepted.

It is this second revised draft convention that this Working Group shall be considering during this 24th session. As you may be aware, the OHCHR’s webpage for this session comprises the text of the second revised draft contention. A compilation of all the suggestions received article-by-article have also been published. To facilitate the discussions, detailed commentaries have also been published. The commentaries below each provision are organized into two distinct sections. The first section reflects the consideration by the expert drafting group of the modifications on each provision suggested by respondents during and pursuant to the twenty-third session of the WGRTD. The second section provides the legal commentary to the text of each provision as revised and reflected in this document. The commentaries also contain, at the end, the second revised draft convention in tracked changes format reflecting the modifications made to the text of the first revised draft convention. Participants during this session may benefit from reference to these commentaries since it is likely that some suggestions may already have been considered previously. Finally, the webpage also contains all the textual suggestions received after the publication of the second revised draft convention.

Before I share a few observations on the key modifications made to the first revised draft convention, let me reiterate that the last resolution of the Human Rights Council – resolution 51/7 adopted on 6 October 2022 – delimited the parameters for this 24th session. It requested the Chair-Rapporteur to submit this second revised draft convention to the Working Group at this 24th session for intergovernmental negotiation and, following that process, to submit the final draft text of the convention on the right to development to the Human Rights Council. In line with this mandate, the expert drafting group will play a less active role in this session to permit a dialogue among participants in the Working Group. We will of course be happy to assist with any clarifications needed during this process.

Insofar as the text of the second revised draft convention is concerned, the following are the main modifications made.

1. During all rounds of discussions on the draft convention at the WGRTD as well as in written submissions, a number of States and civil society organizations recommended replacing the words “human persons” with “human beings” throughout the various provisions of the document. Alternatively, many recommended using the word “individuals”. The Expert Drafting Group had noted in the commentaries to the zero as well as the first revised draft that the term “human person” was employed to reflect the language used in the Declaration on the Right to Development. However, in view of the significant number of respondents requesting these modifications, the drafting group agreed to use the alternative words “human beings” or “individuals” as syntactically appropriate throughout the text. It may be noted that most of the core human rights treaties use both terms “human beings” and “individuals”, although the term “individuals” is employed more often.
2. In draft article 5, paragraph 6, pertaining to the relationship between self-determination and the right to development, a sentence has been added as follows: “Each State Party shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State”. This was done to more accurately reflect the language of UNGA resolution 2625 of 1970, that is, the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.
3. There are a few changes in draft article 13 on the duty to cooperate in some of the sub-paragraphs of paragraph 4. Noteworthy is sub-paragraph (h) related to cooperation on climate change where the principles of just transition, equity, and common but differentiated responsibilities and respective capabilities in the light of national circumstances have been added. A new sub-paragraph (k) has been added based on recommendations received with reference to “Eliminating illicit arms flows by all necessary means in accordance with international commitments”. In renumbered sub-paragraph (m) related to facilitating safe, orderly and regular migration and mobility of people, the phrase “and the adoption of legislative and other measures to prevent and combat trafficking in persons, smuggling of migrants, and crimes against migrants” has been added at the end. This was added based on the recommendation of the UNODC to reflect operative paragraphs 16, 60 and 61 of the [Progress Declaration of the International Migration Review Forum](https://migrationnetwork.un.org/system/files/docs/A%20AC.293%202022%20L.1%20English.pdf) adopted by the General Assembly in May 2022, and in line with the [Global Compact for Safe, Orderly and Regular Migration](https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf).
4. In draft article 16 on equality between men and women, some delegations expressed concerns regarding the term “full equality” for varied reasons. The words have been replaced with “substantive equality” in view of the elaboration of this obligation on States under CEDAW by the Committee on the Elimination of Discrimination Against Women.
5. Draft article 25 establishes the Conference of States Parties. In paragraph 6 of the zero and first revised drafts, it was stipulated that the Conference of States Parties shall be held annually as part of the sessions on the Working Group on the Right to Development. This was done to harmonize the role and mandate of the Conference of the States Parties with the existing WGRTD. In the commentaries to the previous drafts, we had noted that it is likely that some States that may not be parties to the convention may still be interested in pursuing the realization of the right to development by non-conventional means and may want to participate actively in the Working Group’s annual sessions. Likewise, States that are parties to the convention may also want to actively participate in the Working Group’s sessions. We noted that, in principle, it is prudent to ensure a close working relation between the two bodies without diluting their respective mandates, roles and independence. As such, the previous version of paragraph 6 had stipulated that the Conference of the States Parties shall be held annually as part of the sessions of the Working Group. The commentaries to the zero draft also suggested an ideal template for this. However, several States expressed reservations about the reference to the WGRTD in view of its uncertain future pursuant to the establishment of the Conference of States Parties under this convention. In this context, I may note that the main concern of the Expert Drafting Group was to ensure that States that may not become parties to the convention are not excluded from participating in the collective processes to realize the right to development. Prior to the elaboration of the zero draft, at least two States indicated that they may not be in support of a convention since they already participate in the WGRTD in view of their interest in promoting the right to development. Nevertheless, the Expert Drafting Group also noted that paragraph 5 of this very article already does envisage participation in the Conference of States Parties as observers for States that are not parties to the Convention. In view thereof, and in deference to the recommendations received, the references to the WGRTD were deleted. Should the WGRTD, however, continue to exist pursuant to the actual establishment of the Conference of States Parties, the Expert Drafting Group recommends that the structure suggested initially to hold the Conference of States Parties as part of the sessions of the WGRTD be considered from an organizational point of view, even though this is now not referenced as such in the draft convention.
6. Paragraph 8 of this same article 25 in the previous drafts had stipulated that “The Conference of States Parties shall transmit its reports to the General Assembly, the Economic and Social Council, the Human Rights Council, the Working Group on the Right to Development and the high-level political forum on sustainable development. Some delegations recommended that the transmission of reports be done only to the General Assembly. Among the reasons provided were that the future of the WGRTD and the high-level political forum on sustainable development was uncertain, and that, along with the Human Rights Council, these were subsidiary bodies. The Expert Drafting Group agreed to delete a reference to the Human Rights Council since it is a subsidiary body of the General Assembly. Similarly, reference to the WGRTD has been deleted since it is established by the Human Rights Council. Additionally, reference to the HLPF was also deleted since it is a subsidiary body of both the General Assembly and the ECOSOC. However, given the functions of the ECOSOC and its work related to sustainable development, the Expert Drafting Group has recommended retaining references to both the General Assembly and the ECOSOC in this paragraph.
7. In the light of the deletion of references to the Working Group and the HLPF in this provision, the definitions of these two bodies were also deleted from draft article 2.
8. In the previous two drafts, article 30 permitted international organizations to become parties to the convention and further permitted such international organizations in matters within their competence, to exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the Convention. It was further stipulated that such an organization may not exercise its right to vote if any of its member States exercises its right, and vice versa. The said draft article corresponded almost identically to article 44 of the CRPD, with the difference that the CRPD covers only regional integration organizations whereas the original draft article 30 applied to the broader category of international organizations. It may be noted that the CRPD is unique among all existing core human rights treaties, in that, it permits regional integration organizations to join as Parties. The justification for a legally binding instrument on the right to development permitting not just regional integration organizations but international organizations in general is strong. Regional integration organizations have a direct correlation with the subject matter of this draft convention. Indeed, the objectives of regional integration cannot in general be delinked from development. But the same can also be said about many international organizations, including international financial institutions, other specialized agencies and related organizations of the United Nations, as well as independent ones such as the WTO. Clearly, therefore, there is significant value in international organizations being able to join as Parties to the convention. The EDG notes that there is in fact precedent for such an approach in practice. For instance, the European Union has become a party to the CRPD. The drafting group further notes that the fact that international organizations may join the treaty does not put them at the same level as States Parties. It merely permits them the possibility, by virtue of having independent legal personality, to join the treaty and accept the obligations thereunder. Insofar as paragraph 4 is concerned which relates to the right to vote by international organizations, some delegations expressed concern over this permission. The Expert Drafting Group deliberated upon these concerns and eventually agreed with them. It recognized that unlike the CRPD which permits regional integration organizations to exercise a right to vote on behalf of its member States that are parties to the convention, the same logic may not be applicable in the current draft article since different international organizations may have overlapping membership of same States that may also be parties to this convention. As such, the Expert Drafting group agreed with the recommendation to eliminate the possibility for international organizations to vote in the Conference of States Parties. It also recommends excluding the possibility of international organizations to vote for the purposes of amendment of the convention as per article 33, paragraph 1. At the same time, the Expert Drafting Group strongly recommends permitting international organizations the possibility of becoming parties and undertaking obligations as independent legal personalities in international law with critical role in realizing the right to development. In short, while they can become parties and undertake obligations, in view of the deletions now made in the second revised draft, they cannot exercise a right to vote in the Conference of States Parties or for the purpose of amendments.
9. Finally, in draft article 35 related to dispute settlement between States Parties, the provision stipulated that any dispute between two or more States Parties with respect to the interpretation or application of the present Convention that has not been settled by negotiation may, upon agreement by the parties to the dispute be referred to the International Court of Justice for a decision. The provision was drafted in a way that the jurisdiction of the ICJ could be invoked only upon agreement by the parties to the dispute. This made the jurisdiction of the ICJ non-compulsory or non-mandatory and only invokable if the parties to the dispute specifically agree to settle their dispute at the ICJ. However, in order to further assuage concerns by some States, and based on the suggestions received, the Expert Drafting Group has added the phrase “unless another mode of dispute settlement is agreed upon by them” at the end of the paragraph. This caveat has been added by way of an abundance of caution in deference to the suggestions made.

Apart from these main modifications, there are several other changes, many of which are cosmetic, and are reflected in the tracked change version and are explained in the commentaries.

Ladies and gentlemen, I hope this overview has provided the delegations with a useful pedestal to carry forward the deliberations. The Expert Drafting Group remains at your disposal during this process. We will intently listen to the discussions, and after taking into account both the written and oral suggestions made with respect to the second revised draft prior to and during this session, assist the Chair-Rapporteur with his mandate to submit a final draft of the convention for consideration by the Human Rights Council.

I thank you Mr. Chair-Rapporteur.