**Comments and textual suggestions of the Holy See on the**

**Revised Draft Convention on the Right to Development (A/HRC/WG.2/23/2)**

Below are the comments and textual suggestions of the Holy See concerning the revised Draft Convention on the Right to Development as contained in document A/HRC/WG.2/23/2. All additions are contained in square brackets and are preceded by the word ADD; all deletions are similarly preceded by the word DELETE. For ease of reference, all textual suggestions are in red font.

PP10

[**DELETE**: ~~Taking note of~~] [**ADD:** Bearing in mind] the regional human rights instruments and the subsequent practices relating thereto that specifically recognize and reaffirm the right to development, including the African Charter on Human and Peoples’ Rights, the Inter-American Democratic Charter, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Arab Charter on Human Rights, the Human Rights Declaration of the Association of Southeast Asian Nations, the American Declaration on the Rights of Indigenous Peoples, and the Abu Dhabi Declaration on the Right to Development,

PP 11

[**DELETE**: ~~Taking note also of~~] [**ADD:** Bearing in mind also] the obligations of States pertaining to integral development in the Charter of the Organization of American States, and to progressive development in the American Convention on Human Rights,

Explanation: The Holy See requests reverting to the language used in the first draft text of the convention, since the documents are of a regional and not a global nature. “Bearing in mind” thus seems more appropriate.

PP22

*Recognizing* that [**ADD**: **the inherent dignity of all members of the human family is the foundation of freedom, justice and peace, that every**] [**DELETE**: ~~the~~ ] human person [**DELETE**: ~~and peoples are~~] [**ADD**: **is** **therefore]** the central subject[~~s~~] of the development process, and that development policy should [**ADD**: **consequently**] [**DELETE**: ~~therefore~~] make[**s**] [**DELETE**: ~~them~~] [**ADD**: **the human person**] the main participant[~~s~~] and beneficiar[**y**] of development,

Explanation: The Commentary affirms that the reformulation of this paragraph is unnecessary as it had already been stated in the Declaration on the Right to Development; however, in the preamble, it is appropriate to reaffirm those core principles at the heart of the right to development. For this reason, the Holy See reiterates its proposal to include explicit reference to the dignity of the human person as the foundation of the right to development.

Art. 1

The object and purpose of the present Convention is to promote and ensure the full, equal and meaningful enjoyment of the right to development by every human person and all peoples everywhere, and to guarantee its effective [**ADD**: **realization**] [**DELETE**: ~~operationalization~~] and full implementation at the national and international levels

Explanation: The term “operationalization” has a functional connotation while “realization” better reflects the holistic achievement of the enjoyment of the right to development by all.

Art. 3(a)

Development centred on the human person [**DELETE**: ~~and peoples~~]: the human person[**ADD**: **, in virtue of his or her inherent dignity, is**] [**DELETE**: ~~and people are~~] the central subject[~~s]~~ of development and should be the active participant[~~s~~] and beneficiar[**y**]of the right to development;

Explanation: The Holy See reiterates the importance of firmly and explicitly grounding the right to development in the dignity of the human person so as to avoid any inappropriate or incomplete interpretation that would suggest that it is the Convention itself, or the international community, that bestows rights on individuals.

Art. 3(b)

Universal principles common to all human rights: the right to development should be realized in a manner that integrates the principles of equality, non-discrimination, [**ADD**: **promotion**] [**DELETE**: ~~empowerment~~], participation, transparency, accountability, equity, subsidiarity, universality, inalienability, interdependence and indivisibility;

Explanation: While acknowledging the Expert Drafting Group’s affirmation that the word “empowerment” has been interpreted by the OHCHR, the Holy See notes that such an interpretation has not been codified in international law by States. The Holy See therefore reiterates the request to replace the word “empowerment” with the word “promotion” so as to avoid any individualistic interpretation that might otherwise be applied to the term.

Art. 3(c)

Human rights-based development: as development is a human right that is indivisible from and interrelated and interdependent with **[DELETE:** ~~all other~~] [**ADD**: **fundamental** ]human rights, the laws, policies and practices of development, including development cooperation, must be normatively anchored in a system of rights and corresponding obligations established by international law;

Explanation:

The addition of “fundamental” is in line with the UDHR, ICCPR and ICESCR.

Art. 3(f)

Self-determined development: [**DELETE**: ~~development is determined by individuals and peoples as rights holders~~] [**ADD:** the priorities of development are determined, *inter alia*, by individuals and peoples as rights holders, with due consideration for promoting the common good]. The right to development and the right to self-determination of peoples are integral to each other and mutually reinforcing;

Explanation: The Holy See considers the changes from the first draft text to be problematic for several reasons: i) States necessarily have a role to play in “determining” development, based, inter alia, on available resources, global markets, and national/cultural values; ii) “determining” development seems to suggest a very relativistic approach, in which “individuals and peoples” would decide what it means. This is particularly problematic from a perspective of a holistic understanding of human development, which is based on the objective and unchanging values that promote the dignity of the human person, while being implemented in a way that takes into account the subjective and cultural context. The proposed alternative language seeks to address these issues.

Art. 3(g)

Sustainable development: development must be achieved in [**ADD:** all of its aspects, including, *inter alia,*] [**DELETE**: ~~its three dimensions, namely,~~] economic, social, [**ADD:** cultural] and environmental, in a balanced and integrated manner and in harmony with nature. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; and the right to development cannot be realized if development is unsustainable;

Explanation: The Holy See welcomes the inclusion in the second draft of the environmental dimension of development. The mention of the “three dimensions” of development (economic, social and environmental), however is problematic as it is presented as an exhaustive list. While many other aspects could be added as well (intellectual, emotional, religious), the EDG has commented that it wants to keep the paragraph “simple and non-controversial”, and the addition of multiple adjectives would complicate the formulation. The alternative wording proposed here would cover all bases of development while still maintaining the simple and non-controversial nature of the sub-article that the Expert Drafting Group desires to achieve. The addition of the “cultural” aspect of development also harmonizes the current article with the additions made in PP17.

Art. 5(5)

States shall take resolute action to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and [**ADD:** racial] discrimination, colonialism, [**ADD:** foreign] domination and occupation, aggression, [**ADD:** foreign] interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to [**ADD:** otherwise] recognize the fundamental right of peoples to self-determination

Explanation: The Holy See suggests reverting to the former wording of this sub-paragraph, as included in the first draft of the Convention.

Art. 6(1)

States Parties reaffirm that all human rights, including the right to development, are universal, inalienable, interrelated, interdependent, [**ADD**: **and**] indivisible [**DELETE**: ~~and equally important~~].

Explanation: It is incorrect to suggest that all human rights are “equally important”, since certain rights (e.g. the right to life) are necessary conditions for the enjoyment of other rights. The Holy See reiterates its request to delete “and equally important”.

Art. 7 **Relationship with the responsibility of everyone to respect human rights under international law**

Nothing in the present Convention may be interpreted as implying for any human or legal person, people, group or State any right to engage in any activity or perform any act aimed at the destruction, nullification or impairment of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention. To that end, States Parties agree that all human and legal persons, peoples [**ADD**: **and**] groups[**DELETE**: ~~and States~~] have the [**ADD**: **responsibility, in virtue of the inherent dignity of every human person,**] [**DELETE**: ~~general duty under international law~~] to refrain from participating in the violation of the right to development. [**ADD**: **States have the duty to implement appropriate mechanisms, at the national and international levels, to ensure that such violations do not occur and that recourse is provided for victims in the event of such violations**.]

Explanation: The proposed amendments to this Article harmonize the content of the Article with its title, which refers to “the responsibility of everyone to respect human rights”. It also denotes the obligation of States to ensure that proper mechanisms are put into place to address cases in which individuals or entities that do not possess full international subjectivity violate their responsibility in this regard.

Art. 8(3)

States Parties shall ensure that public authorities and institutions [**DELETE**: ~~at all levels~~]act in conformity with the present Convention.

Explanation: The inclusion of “at all levels” could lead to problematic interpretations, especially considering the inclusion in numerous articles of the duty of States to ensure compliance with the Convention even outside their territories, regarding which numerous States have expressed their concern.

Art. 9

Without prejudice to the general [**DELETE**: ~~duty~~] [**ADD**: **responsibility**]contained in article 7, States Parties agree that international organizations also have the obligation to refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach any obligation that the State or the latter organization may have with regard to the right to development.

Explanation: The title of Article 7 refers to the “responsibility” of everyone to protect…; it would be appropriate to harmonize the language with that article.

Art. 10

**Obligation to respect**

States Parties shall refrain from conduct[**DELETE**: ~~whether expressed through law, policy or practice,~~] that:

Explanation: The Commentary specifies that “conduct” implies both acts and omissions. The very broad context of such conduct, which would include “law, policy or practice”, potentially exposes States to numerous allegations of breaching international obligations. This is all the more the case given the fact that, in virtue of Article 10(a), States would be held accountable for action/inaction that occurs outside their territory.

Art. 11

**Obligation to protect**

States Parties shall adopt and enforce all necessary, appropriate and reasonable measures, including administrative, legislative, investigative, judicial, diplomatic or others, to ensure that human or legal persons, peoples, groups, or any other State or agents that the State is in a position to regulate do not nullify or impair the enjoyment and exercise of the right to development [DELETE: ~~within or outside their territories~~] when:

Explanation: In the commentary on Article 10(a), the Expert Drafting Group noted the lack of consensus on including “within or outside their territories”. The Holy See is of the position that this reference should be removed from this Article as well, for the same reasons.

Art. 11(a)

Such conduct [**DELETE**: ~~originates from or~~] occurs on the territory of the State Party;

Explanation: The broad applicability of conduct, including omissions, and the lack of jurisdiction of a State on such conduct that occurs outside its territory would create undue burdens on States to uphold their obligation to protect. The Holy See therefore suggests to limit the scope of this sub-paragraph to such conduct that occurs on the territory of the State Party.

Whereas the Holy See is of the view that combining the concept of “effective control” with an “obligation to protect outside their territories”, an undue burden is placed on States that, in practice, would be impossible to uphold. **The explanation that had been provided by the Holy See in no way should be construed to imply that the Holy See adopts the notion of “effective control”** but, rather, the EDG had expressed in its own commentary to the first draft their intention to do so.

Art. 12(2)

To this end, each State Party shall take all necessary measures at the national level [**ADD:** and in accordance with domestic legislation], and shall ensure, inter alia, equality of opportunity for all human persons and peoples in their access to basic resources, education, health services, food, housing and employment, and in the fair distribution of income, and shall carry out appropriate economic and social reforms with a view to eradicating all social injustices.

Explanation: The Holy See considers the proposed insertion as an important addition so as to recognize the specific nature and structure of each State Party.

Art. 15

**Specific** [**DELETE:  ~~and remedial~~**] **measures**

1. States Parties recognize that certain human persons, groups and peoples, owing to their marginalization or vulnerability because of race, colour, sex, language, religion, political or other opinion, nationality, statelessness, national, ethnic or social origin, property, disability, birth, age or other status, including as human rights defenders, may need specific [**DELETE: ~~and remedial~~**]measures to accelerate or achieve de facto equality in their enjoyment of the right to development. Specific [**DELETE: ~~and remedial~~**]measures can include, among others, enabling the full, effective, appropriate and dignified participation of such human persons, groups, and peoples in decision-making processes, programmes and policymaking that affect their full and equal enjoyment of the right to development, without subjecting them to structural, environmental or institutional constraints or barriers.

Explanation: The Holy See notes that the Expert Drafting Group formulated this provision bearing in mind UNGA Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005*. It must be said, however, that the “remedies” addressed in the UNGA Resolution refer to victims, which is substantially different than the “remedial measures” envisioned for persons or groups in vulnerable situation.

It must be reiterated that no other Human Rights treaty refers to “remedial measures”.

While recognizing that special/specific measures might need to be taken to ensure the “de facto equality” in the enjoyment of the right to development of certain persons and groups, the concept of “remedial measures” seems to consolidate the logic according to which such groups of persons enjoy rights *per se*, rather than in a derivative fashion, in virtue of the dignity of every human person. In practice, there is little evidence to suggest that “remedial measures” are effective in creating a true situation of equality. On the contrary, it is a subtle form of continuing discrimination (even if positive), which often results in reverse-discrimination concerning persons outside the category that enjoys such remedial measures.

Art. 15(2)

States Parties recognize that developing and least developed countries, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require specific [**DELETE: ~~and remedial~~**]measures through mutually agreed international legal instruments, policies and practices for ensuring equal realization of the right to development by all human persons and peoples. Such measures may, as appropriate, include:

Art. 22(3)

States Parties undertake to promote peace [**DELETE**: ~~and inclusive societies~~**]** within their territories for the full realization of the right to development for all.

Explanation: The Holy See welcomes the addition of the paragraph as an important step in strengthening the commitment to peace and security with regard to development. However, the reference to “and inclusive societies” is unnecessary and out of place within the context of this sub-paragraph. The Holy See therefore requests its deletion.

Art. 23(a)

Laws, policies and practices relating to development at the national and international levels are aimed at and contribute to the realization of sustainable development, consistent with States Parties’ obligations under [**ADD:** applicable] international [**DELETE**: ~~environmental~~] law[**DELETE**:~~, climate change law and human rights law~~];

Explanation: The Holy See is of the position that referring generally to “applicable international law” helps to ensure that all relevant aspects of international law are included in the realization of sustainable development.

Art. 24(1)

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention. [**DELETE**: ~~To that end, the United Nations and its specialized agencies are under an obligation to promote the right to development~~][**ALTERNATIVELY ADD:** To that end, **the States Parties recognize that** the United Nations and its specialized agencies are under an obligation to promote the right to development].

Explanation: While the Commentary affirms that it does not intend to create additional obligations for the UN and its specialized agencies, simply reaffirming the obligations that are contained in the Charter and the constitutive documents of the various specialized agencies, it is inappropriate in a legally binding instrument to define the obligations of another international body. For this reason, the Holy See requests the deletion of the final phrase of this sub-paragraph or, if that is not possible, the adoption of the alternative language proposed above.

Art. 24(2)

The provisions of the present Convention shall not affect the rights and obligations of any State Party deriving from any existing international law, except where the exercise of those rights and the [**DELETE**: ~~and discharge of those obligations~~] would contravene the object and purpose of the present Convention. The present paragraph is not intended to create a hierarchy between the present Convention and other international law.

Explanation: The provisions of the present Convention could potentially affect the rights enjoyed in virtue of other international agreements, especially where the RTD is concerned, under the principle of *pact sunt servanda* it would be inappropriate to assert that the obligations under other instruments are affected by this Convention. If this were to be the case, a *de facto* hierarchy of international agreements would be created, notwithstanding the final phrase of this article.

Art. 25.2

The Conference of States Parties shall keep under regular review the effective implementation of the Convention and any related legal instruments that the Conference of States Parties may in [**ADD**: **the**] future adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To that end, the Conference of States Parties shall

Explanation: Typographical correction.

Art. 25.2(g)

Exercise such other functions [**ADD**: , within the scope of the Convention,] as are required for the achievement of the object and purpose, as well as the aims, of the Convention.

Explanation: The proposed modification seeks to limit the scope of the functions and activities that the Conference in this regard.

Art. 25(6)

The Conference of States Parties shall be held annually [**DELETE**: ~~as part of the sessions of the Working Group on the Right to Development~~.]

Explanation:

* States Parties do not have jurisdiction to determine the internal processes of the Working Group and therefore do not have the right to dictate that part of its sessions will be dedicated to the Conference;
* while operative for several years, the Working Group may one day be terminated; it is inadvisable that the Conference be dependent on a separate and distinct international organ;
* modalities for coordinating with the Working Group could just as easily, and much more appropriately, be addressed within the Rules of Procedure of the Conference

Art. 27.3(d)

Undertake any other functions that may be vested by the Conference of States Parties [**ADD**: **and that lie within the purview of the Convention**]

Explanation: The proposal is aimed at focusing the work of the implementation mechanism to those areas relevant to the Convention.