**Errors contained in document** [**A/HRC/WG.2/23/CRP.1**](https://www.ohchr.org/sites/default/files/2022-03/A_HRC_WG2_23_CRP1.pdf) ***Compilation of comments and textual suggestions on the draft convention on the right to development* with regard to the proposals submitted by the Holy See**

With Note Verbale N. 4756/21/E-mail, of 31 January 2022, The Permanent Mission of the Holy See in Geneva transmitted the proposals of the Holy See on the first version of a draft Convention on the Right to Development ([A/HRC/WG.2/21/2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/011/04/PDF/G2001104.pdf?OpenElement)), which had been elaborated by the Expert Drafting Group (EDG) of the Working Group on the Right to Development (WGR2D). On 8 March 2022, the Secretariat of the WGR2D published the compilation of the numerous submissions received by States and other stakeholders ([A/HRC/WG.2/23/CRP.1](https://www.ohchr.org/sites/default/files/2022-03/A_HRC_WG2_23_CRP1.pdf)). This compilation document then served as the basis for the EDG to prepare a second version of the draft Convention on the Right to Development ([A/HRC/WG.2/23/2](http://undocs.org/en/A/HRC/WG.2/21/2)), which was published on 16 May 2022. The EDG also published, on the same date, a commentary on the new revision of the draft ([A/HRC/WG.2/23/2/Add.1](https://www.ohchr.org/sites/default/files/2022-05/A_HRC_WG2_23_2_Add.1.pdf)). While the abovementioned document does contain the proposals submitted by the Holy See, in many cases those proposals were not accurately reflected in the compilation document. Most notably, all of the instances in which the Holy See had proposed the deletion of words or phrases, those deletions were not reflected in the document. This resulted, in many cases, for a drastic misrepresentation of the Holy See’s proposals and position. Below is a table which includes: in the first column, the proposals as submitted by the Holy See; in the second column, the proposals of the Holy See as they were reflected in the compilation document; and in the third column, comments and observations of this Permanent Mission, with the inclusion of the references that were made by the EDG to the proposals submitted by the Holy See (as inaccurately reflected by the compilation document). For the purpose of the present document, the numbering of the paragraphs corresponds to the first draft of the Convention, on which the proposals of the Holy See are made..

| **Para** | **Proposals as submitted by the Holy See** | **Proposals as reflected in the compilation of proposals (Document:** [**A/HRC/WG.2/23/CRP.1**](https://www.ohchr.org/sites/default/files/2022-03/A_HRC_WG2_23_CRP1.pdf)**)** | **Observations, including Comments from the Drafting Committee in Document** [**A/HRC/WG.2/23/2/Add.1**](https://www.ohchr.org/sites/default/files/2022-05/A_HRC_WG2_23_2_Add.1.pdf) |
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| PP2 | *Concerned* at the existence of serious obstacles to the realization of the right to development constituted, inter alia,by poverty, inequality within and across countries, climate change, colonization, neo-colonization, forced displacement, racism, conflicts, aggression and threats against national sovereignty, national unity and territorial integrity, and the denial of [**ADD**: **fundamental**] human rights, Agreed language consistent with the UDHR and main human rights treaties, including ICCPR and ICESCR (i.e. “International Bill of Human Rights”). | Concerned at the existence of serious obstacles to the realization of the right to development constituted, inter alia, by poverty, inequality within and across countries, climate change, colonization, neo-colonization, forced displacement, racism, conflicts, aggression and threats against national sovereignty, national unity and territorial integrity, and the denial of [fundamental] other human rights, (Explanation: Agreed language consistent with the UDHR and main human rights treaties, including ICCPR and ICESCR (i.e. “International Bill of Human Rights”).) | The Secretariat accurately reflected the submission of the Holy See.No comment was made in the Commentary. |
| PP4 | *Recognizing* that development is a comprehensive economic, social, cultural, civil, [**ADD**: **ethical**] and political process that aims 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 benefits resulting therefrom, While this paragraph appropriately recognizes that development cannot be reduced to a set of economic factors, it could be useful to include “ethical”, which is an integral aspect of development and the flourishing of the whole human person. | Recognizing that development is a comprehensive economic, social, cultural, civil [, ethical] and political process that aims 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 benefits resulting therefrom, | The Secretariat neglected to include the explanation for including “ethical”.“The Holy See recommended including the word “ethical”, which the Expert Drafting Group did not deem necessary for this particular preambular paragraph but is more related to the next new preambular paragraph.” (page 17). |
| **PP4bis** | ***Stressing* that the right to development islinked to responsible stewardship and care for our common home, which concerns the entire human family, and further *stressing* the urgent need to work together to seek sustainable and integral human development.**In this drafting process, we are addressing not only the economic and social dimensions of development, the role of the right to development in relation to the common good and solidarity among generations. For this reason, it would be useful to introduce in the Preamble the concept of “responsible stewardship” and as pillar to shape the convention. Neglecting to monitor the harm done to nature and the environmental impact of our decisions is only the most striking sign of a disregard for the message contained in the structures of nature itself. | [Stressing that the right to development is linked to responsible stewardship and care for our common home, which concerns the entire human family, and further stressing the urgent need to work together to seek sustainable and integral human development.]Explanation provided by the Holy See: In this drafting process, we are addressing not only the economic and social dimensions of development, the role of the right to development in relation to the common good and solidarity among generations. For this reason, it would be useful to introduce in the Preamble the concept of “responsible stewardship” and as pillar to shape the convention. Neglecting to monitor the harm done to nature and the environmental impact of our decisions is only the most striking sign of a disregard for the message contained in the structures of nature itself. | The Secretariat accurately portrayed the submission of the Holy See.“The Expert Drafting Group did not accept the Holy See’s proposal for a new para. 4bis (“Stressing that the right to development is linked to responsible stewardship and care for our common home, which concerns the entire human family, and further stressing the need to work together to seek sustainable and integral human development”). This particular phraseology, while drawing from the Laudato Si papal encyclical (which is itself a significant international instrument but not a treaty itself or evidence of a norm of customary international law yet at this time), does not, however, reflect the status of existing general international law as a whole.” (page 17) |
| PP6 | *Recognizing* that the realization of the right to development constitutes both the primary end and the principal means of sustainable [**ADD: and integral** ]development, and that the right to development cannot be realized if development is not sustainable [**ADD: and integra**l], This PP introduces a *fil rouge* of the Convention, i.e., that development can only be truly considered such of it is sustainable and also integral, that is, benefiting the entire human person. | Recognizing that the realization of the right to development constitutes both the primary end and the principal means of sustainable [and integral] development, and that the right to development cannot be realized if development is not sustainable [and integral],(Explanation: This PP introduces a fil rouge of the Convention, i.e., that development can only be truly considered such of it is sustainable and also integral, that is, benefiting the entire human person.) | The Secretariat accurately portrayed the submission of the Holy See.“The Expert Drafting Group considers this preambular paragraph in conjunction with the 2022 Revised Draft Convention’s Article 3(g) (sustainable development) and the new Article 23 (Sustainable Development). It considered several proposals from […] the Holy See to refer to “sustainable and integral development” (page 19). |
| PP19 | *Bearing in mind also* the obligations of States pertaining to integral development in the Charter of the Organization of American States of 1948, and to progressive development in the Inter-American Convention on Human Rights of 1969,It is noteworthy that the Charter of the OAS dedicates an entire chapter (Chapter VII) to *integral* development, referencing specifically the inherent dignity of work and the importance of spiritual development.[[1]](#footnote-1) |  | The Secretariat did not include this comment in the list of submissions from stakeholders, most likely because it is not a concrete textual suggestion. |
| PP21 | *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, The Commentary affirms that the draft Convention is intentionally person-centered. At the same time, i) Whether intentionally or not, the Convention treats the right to development as the product of international law, rather than an inherent characteristic flowing from the dignity of the human person. As will become even clearer in the operative paragraphs, this has a significant and negative impact on the approach to delineating the various rights and duties incumbent on individuals, groups, organizations and States;ii) As a corollary to the “source” of the right to development, the draft Convention appears to blur the distinction between certain rights that belong groups of individuals and to “peoples” that would somehow be distinct from the inherent right to development enjoyed by each member of the human family. In this particular paragraph it is important to refer specifically to individual rights.While the formulation of this PP is based on PP13 of the DRTD, significantly, the latter referred only to the *human person* as the central subject of the development process[[2]](#footnote-2). Therefore, **It would be desirable to revert to the language used in the DRTD** and to add language from the preamble of the UDHR, specifically in reference to human dignity.  | Recognizing that [the inherent dignity of all members of the human family is the foundation of freedom, justice and peace, that every] **the** human person **and peoples are** [is therefore] the central subject**s** of the development process, and that development policy should [consequently] **therefore** make[s] **them** [the human person] the main participant**s** and beneficiar[y] of development,(Explanation: The Commentary affirms that the draft Convention is intentionally person-centered. At the same time,i) Whether intentionally or not, the Convention treats the right to development as the product of international law, rather than an inherent characteristic flowing from the dignity of the human person. As will become even clearer in the operative paragraphs, this has a significant and negative impact on the approach to delineating the various rights and duties incumbent on individuals, groups, organizations and States;ii) As a corollary to the “source” of the right to development, the draft Convention appears to blur the distinction between certain rights that belong to groups of individuals and to “peoples” that would somehow be distinct from the inherent right to development enjoyed by each member of the human family. In this particular paragraph it is important to refer specifically to individual rights.While the formulation of this PP is based on PP13 of the DRTD, significantly, the latter referred only to the human person as the central subject of the development process. Therefore, It would be desirable to revert to the language used in the DRTD and to add language from the preamble of the UDHR, specifically in reference to human dignity. | The Secretariat neglected to delete “and peoples”, as well as various other orthographical deletions. The following comments from the commentary likewise do not reflect the proposed deletions:“The Expert Drafting Group noted the proposal of the Holy See to reformulate this paragraph into a more elaborate form (“Recognizing that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace, that every human person and peoples are therefore central subjects of the development process, and that development policy should consequently therefore make the human person the main participant and beneficiary of development”). However, because the core ideas of the proposal were already contained in this formulation taken directly from the 1986 Declaration on the Right to Development, the Expert Drafting Group did not see the need to reformulate the provision.” (page 20) |
| PP22 | *Recognizing also* that all human persons and peoples are entitled to a national and global environment conducive to just, equitable, participatory and human-centred development, respectful of all [**ADD**: **fundamental**] human rights, If the language in the previous paragraph is adequately adjusted, the inclusion of “and peoples” is acceptable here as it is in line with the DRTD.The addition of “fundamental” is, once again, in line with the UDHR, ICCPR and ICESCR.  | Recognizing also that all human persons and peoples are entitled to a national and global environment conducive to just, equitable, participatory and human-centred development, respectful of all [fundamental] human rights, (Explanation: If the language in the previous paragraph is adequately adjusted, the inclusion of “and peoples” is acceptable here as it is in line with the DRTD.  The addition of “fundamental” is, once again, in line with the UDHR, ICCPR and ICESCR. ) | The Secretariat accurately portrayed the submission of the Holy See.No commentary was made on this proposal. |
| PP24 | *Recognizing* that every organ of society at the national or the international level has a duty to respect the human rights of [**ADD**: **all**] [**DELETE**: ~~individuals and peoples~~], including the right to development,“Every organ of society” is a phrase taken from the UDHR and reaffirmed, inter alia, by the “*UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*”[[3]](#footnote-3) (hereinafter, the 1998 Declaration).While, in principle, this affirmation is not inaccurate, the lack of reference to human dignity as the source of human rights (cf. PP21) will lead in the operative paragraphs to a mistaken and inappropriate application of international law, by which States impose international obligations on individuals and groups that do not have international subjectivity.Here again, preferable language would read “to respect human rights” or “to respect the human rights of all” instead of creating groups as a category of pseudo rights-holders. | Recognizing that every organ of society at the national or the international level has a duty to respect the human rights of [all] **individuals and peoples**, including the right to development, (Explanation: “Every organ of society” is a phrase taken from the UDHR and reaffirmed, inter alia, by the “UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (hereinafter, the 1998 Declaration). While, in principle, this affirmation is not inaccurate, the lack of reference to human dignity as the source of human rights (cf. PP21) will lead in the operative paragraphs to a mistaken and inappropriate application of international law, by which States impose international obligations on individuals and groups that do not have international subjectivity. Here again, preferable language would read “to respect human rights” or “to respect the human rights of all” instead of creating groups as a category of pseudo rights-holders.) | The Secretariat neglected to delete “individuals and people”There is no mention of this proposal in the commentary. |
| PP25 | *Concerned* that, despite the adoption of numerous resolutions, declarations and agendas, the right to development has not yet been effectively [**ADD**: **realized**] [**DELETE**: ~~operationalized~~],The use of the term “operationalized” affirms that the RTD is a product of the international community and not an organic consequence of the inherent dignity of human persons | Holy See: Concerned that, despite the adoption of numerous resolutions, declarations and agendas, the right to development has not yet been effectively [realized] **operationalized**, (Explanation: The use of the term “operationalized” affirms that the RTD is a product of the international community and not an organic consequence of the inherent dignity of human persons.) | The Secretariat neglected to include the deletion of the word “operationalized”.There is no mention in the commentary of this proposal. |
| Art.1 | **Part I****Article 1 – Object and purpose**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**: **realized**] [**DELETE**: ~~operationalized~~] and full implementation at the national and international levels. The textual modifications are based on the comments made above (PP24 and 25) | 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 [**realization**] **operationalization** and full implementation at the national and international levels. (Explanation: The textual modifications are based on the comments made above (PP24 and 25) ) | While seemingly correcting an orthographic error in the submission of the Holy See, the Secretariat neglected to delete the word “operationalization”.There is no mention in the commentary of this proposal. |
| Art 3a | (a) Human person [**DELETE**: ~~and people~~] centred development: 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; With the exception of the reference made in the context of the UDHR in PP12, the dignity of the human person is never acknowledged in the Draft Convention. It seems most appropriate that such a reference be made, especially to affirm human dignity as the foundation of human rights. The Commentary on this paragraph insists on the importance of including “peoples” as right-bearers, indicating that a “people” has a distinct legal personality and that *“[i]nternational law confers upon a ‘people’ certain collective rights which cannot be reduced as the sum-total of the rights of individuals who make up that collective.”[[4]](#footnote-4)* While it could be contended that the right to development for persons who are also members of an indigenous or other ‘people’ must be context specific and, therefore, take on unique characteristics based on that fact, it would seem inappropriate to suggest that the people *per se* is the right-holder, as it is the dignity of the human person which is the source of any right.In this regard, the reference to “peoples” here is misleading | . (a) Human person **and people-** centred development: the human person [in virtue of his or her inherent dignity, is] **and people are** the central subject**s** of development and should be the active participants and beneficiar**ies**[y] of the right to development; (Explanation: With the exception of the reference made in the context of the UDHR in PP12, the dignity of the human person is never acknowledged in the Draft Convention. It seems most appropriate that such a reference be made, especially to affirm human dignity as the foundation of human rights. The Commentary on this paragraph insists on the importance of including “peoples” as right-bearers, indicating that a “people” has a distinct legal personality and that “[i]nternational law confers upon a ‘people’ certain collective rights which cannot be reduced as the sum-total of the rights of individuals who make up that collective.” While it could be contended that the right to development for persons who are also members of an indigenous or other ‘people’ must be context specific and, therefore, take on unique characteristics based on that fact, it would seem inappropriate to suggest that the people per se is the right-holder, as it is the dignity of the human person which is the source of any right. In this regard, the reference to “peoples” here is misleading. ) | The Secretariat neglected to delete the words “and people”, as well as the corresponding orthographical deletions. The commentary also insufficiently reflects the proposal: “The Expert Drafting Group noted the Holy See’s proposal to insert “in virtue of his or her inherent dignity, is” after the phrase “the human person”. However, reference to this phrase is unnecessary since the third preambular paragraph already achieves this objective.” (page 26). |
| Art. 3b | (b) Universal principles common to all human rights: the right to development should be realized in a manner that integrates the principles of accountability, [**ADD**: **promotion**] [**DELETE**: ~~empowerment~~], participation, non-discrimination, equality and equity;The term “empowerment” has the tendency to promote an individualistic approach to human rights, which would pit the rights of one against those of another; a more integral approach to the human person would prefer language such as “promotion”, “access” or even “accessibility”. | (b) Universal principles common to all human rights: the right to development should be realized in a manner that integrates the principles of accountability, [promotion] **empowerment**, participation, non-discrimination, equality and equity; (Explanation: The term “empowerment” has the tendency to promote an individualistic approach to human rights, which would pit the rights of one against those of another; a more integral approach to the human person would prefer language such as “promotion”, “access” or even “accessibility”.) | The Secretariat neglected to delete the word “empowerment”.“The Expert Drafting Group noted the Holy See’s concern over the reference to the term “empowerment” as suggestive of a perhaps individualistic approach to human rights, but this word has already been interpreted in the context of the right to development: “Empowering people means moving beyond purely technocratic solutions and treating people as passive objects of aid or charity. People are empowered when they are able to claim their rights and to shape the decisions, policies, rules and conditions that affect their lives.” ” (page 27) |
| Art. 3c | (c) Human rights-based approach to development: development is a human right and should be realized as such and in a manner consistent with and based on**[DELETE:** ~~all other~~] [**ADD**: **fundamental**]human rights;The addition of “fundamental” is, once again, in line with the UDHR, ICCPR and ICESCR.  | (c) Human rights-based approach to development: development is a human right and should be realized as such and in a manner consistent with and based on **all other** [fundamental] human rights; (Explanation: The addition of “fundamental” is, once again, in line with the UDHR, ICCPR and ICESCR. ) | The Secretariat neglected to delete the words “all other”.There is no mention in the commentary of this proposal. |
| Art. 3e | (e) Sustainable development: development cannot be sustainable if its realization undermines the right to [**ADD**: **integral**] development, and the right to development cannot be realized if development is unsustainable [**ADD**: **and harms our common home**];This operative sub-paragraph translates into a “general principle” of the observations made in PP6.In addition, it is important to include a reference to the harm done to our common home when development is not sustainable.  | (e) Sustainable development: development cannot be sustainable if its realization undermines the right to [integral] development, and the right to development cannot be realized if development is unsustainable [and harms our common home]; (Explanation: This operative sub-paragraph translates into a “general principle” of the observations made in PP6. In addition, it is important to include a reference to the harm done to our common home when development is not sustainable. ) | The Secretariat accurately reflected the proposal of the Holy See.There is no mention in the commentary of this proposal. |
| Art. 3g | (g) International solidarity: the realization of the right to development requires an enabling national and international environment created through a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals, [**ADD**: **protect our common home** **and promote the common good**]; this principle includes the duty to cooperate;There is no mention of the common good or our common home in the draft Declaration. This seems like an appropriate place in which at least a passing reference to both could be made. | (g) International solidarity: the realization of the right to development requires an enabling national and international environment created through a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals [, protect our common home and promote the common good]; this principle includes the duty to cooperate; (Explanation: There is no mention of the common good or our common home in the draft Declaration. This seems like an appropriate place in which at least a passing reference to both could be made.) | The Secretariat accurately reflected the proposal of the Holy See.“The Holy See recommended insertion of the clause “protect our common home and promote the common good” before the clause “this principle includes the duty to cooperate” […] Insofar as the text is concerned, the Expert Drafting Group considered it appropriate to adhere as much as possible to the definition of international solidarity contained in the draft declaration on human rights and international solidarity. Only the modifications as reflected in the reformulated text above were thus accepted when they help strengthen the text..” (page 34) |
| Art. 4(1) | 1. [**DELETE**: ~~Every human person and all peoples have the inalienable right to development~~ ~~by virtue of which they~~] [**ADD:** **The inherent dignity of every human person is the foundation of freedom, justice and peace 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 [**ADD:** **integral**] economic, social, cultural, civil [**ADD**:**,** **ethical, spiritual]** and political development that is consistent with and based on all other human rights and fundamental freedoms.Article 4 seeks to indicate the right-holders of the RTD.While it is based primarily on Article 1(1) of the DRTD[[5]](#footnote-5), the present language specifies that “peoples” are among the right-bearers. The Commentary presumes that this was the intention of the DRTD, however the language in the DRTD seems much more appropriate, indicated that the RTD is an inalienable *human right* and, only as a corollary to that fact, are peoples entitled to enjoy its realization.The modifications from DRTD 1(1) to the second part of the subparagraph seeks to clearly affirm that the RTD is a right *per se* (not a meta-right, cf. Art. 3(c)) while using language from the preamble of the UDHR.In addition, both the spiritual and ethical dimensions of development are included. | **Every human person and all peoples have the inalienable right to development by virtue of which they** [The inherent dignity of every human person is the foundation of freedom, justice and peace 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 [integral] economic, social, cultural, civil [, ethical, spiritual] and political development that is consistent with and based on all other human rights and fundamental freedoms. Explanation: Article 4 seeks to indicate the right-holders of the RTD. While it is based primarily on Article 1(1) of the DRTD , the present language specifies that “peoples” are among the right-bearers. The Commentary presumes that this was the intention of the DRTD, however the language in the DRTD seems much more appropriate, indicated that the RTD is an inalienable human right and, only as a corollary to that fact, are peoples entitled to enjoy its realization. The modifications from DRTD 1(1) to the second part of the subparagraph seeks to clearly affirm that the RTD is a right per se (not a meta-right, cf. Art. 3(c)) while using language from the preamble of the UDHR. In addition, both the spiritual and ethical dimensions of development are included. ) | The Secretariat neglected to reflect the deletion of the first part of the proposal. This error is reflected also in the commentary: “ The Holy See proposed to include the clause “the inherent dignity of every human person is the foundation of freedom, justice, and peace and the right to development is an inalienable human right by virtue of which every human person and all peoples” right before the phrase “are entitled to participate in”. For the same reasons stated above, the Expert Drafting Group maintains the closeness of the formulation to Article 1(1) of the Declaration on the Right to Development, with adaptations that simply reflects the expected indivisibility, interdependence and interrelatedness of a human right such as the right to development, with all other human rights and fundamental freedoms. The Holy See’s proposal on the inherent dignity of every human person is already reflected in the third preambular paragraph in the Revised Draft Convention, as well as in international human rights law that contains such language and will be deemed indivisible from, interdependent with, and interrelated with the right to development.” (page 37) |
| Art. 4(2) | 2. Every human person, [**ADD:** **individually and in association with others, has**][**DELETE**: ~~and all peoples have~~] the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.See above for rationale. | 2. Every human person, [individually and in association with others, has] **and all peoples have** the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. | The Secretariat neglected to reflect the deletion of “and all people have” from the proposal of the Holy See.“ The Holy See proposed inserting the phrase “individually and in association with others, has”, after the phrase “every human person”. The Expert Drafting Group did not accept this insertion, since it would change the applicability of this legally binding instrument more towards individuals and associations, while overlooking its core applicability as well to peoples, especially in the context of the right to development and the right to self determination” (page 38). |
| Art. 5(1) | 1. [ADD: **In virtue of the inherent and universal dignity of every human person**], the right to development implies the full realization of the right of all peoples to self-determination. While the principle of self-determination of peoples is enshrined in the UN Charter (cf. Art. 1(2) and Art. 55), it was only later that this principle was developed as a collective “right” of peoples. This development was codified in the *International Covenant on Civil and Political Rights* (ICCPR) and in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Nonetheless, the discussions surrounding the codification of this right clearly indicate that the “right” to self-determination of peoples is the logical consequence of the inherent rights and freedoms of the human person, based on universal human dignity. Without removing references to the right of peoples to self-determination, it would be crucial to highlight the foundation of this right in the dignity of the human person. | [In virtue of the inherent and universal dignity of every human person], the right to development implies the full realization of the right of all peoples to self-determination. (Explanation: While the principle of self-determination of peoples is enshrined in the UN Charter (cf. Art. 1(2) and Art. 55), it was only later that this principle was developed as a collective “right” of peoples. This development was codified in the International Covenant on Civil and Political Rights (ICCPR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nonetheless, the discussions surrounding the codification of this right clearly indicate that the “right” to self-determination of peoples is the logical consequence of the inherent rights and freedoms of the human person, based on universal human dignity. Without removing references to the right of peoples to self-determination, it would be crucial to highlight the foundation of this right in the dignity of the human person. ) | The Secretariat accurately reflected the proposal of the Holy See.There is no mention of the proposal in the commentary. |
| Art. 6(1) | 1. States Parties reaffirm that all human rights, including the right to development, are universal, interrelated, interdependent [**ADD**: **and**] indivisible [**DELETE**: ~~and equally important~~]. The sub-paragraph seeks to incorporate a principle outlined in the 1995 *Vienna Declaration and Programme of Action* which reads “The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”.[[6]](#footnote-6) Nonetheless, 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. | 1. States Parties reaffirm that all human rights, including the right to development, are universal, interrelated, interdependent, [and] indivisible **and equally important.** (Explanation: The sub-paragraph seeks to incorporate a principle outlined in the 1995 Vienna Declaration and Programme of Action which reads “The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”. Nonetheless, 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 Secretariat neglected to reflect the deletion of “and equally important”, rendering the proposal of the Holy See grammatically obtuse, as is evidenced by the following comments: “The Expert Drafting Group noted the proposal of the Holy See to insert the word “and” before the word “indivisible”. However, the insertion does not improve the provision, and instead creates syntax problems.” (page 44). |
| Art. 6(2) | 2. States Parties agree that the right to development is an integral part of human rights and should be realized in conformity with the full range of civil, cultural, economic, political and social rights.Once again, this sub-paragraph seeks to clarify that the RTD cannot be reduced to the sum of the enjoyment of all other rights (as a meta-right) but rather must be considered as a right in its own regard (cf. Art. 3(c) and Art. 4(1)). |  | The Secretariat did not include this comment in the list of submissions from stakeholders, most likely because it is not a concrete textual suggestion. |
| Art. 7 | **Article 7 – Relationship with the** [**DELETE: ~~general duty~~**] [**ADD: responsibility**] **of everyone to respect human rights** [**DELETE: ~~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 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**.]This sub-paragraph introduces a faulty understanding of international law and further highlights the problems inherent in the approach adopted by the Draft Convention regarding the “source” of the RTD (cf. PP21). This Article would introduce international obligations on individuals and entities that do not have international subjectivity. This would create a dangerous precedent that seems to run contrary to the basic principles of international law. Additionally, the Draft Convention remains vague concerning which subject of international law would be held responsible for the failure to fulfil the aforementioned obligations. While it might be presumed that the State in whose territory the obligations are failed to be met would be held responsible, this is further complicated by the introduction in later Articles (cf. Art. 10(a)) of the concept of effective jurisdiction or control.The Commentary seeks to justify the position that individuals and groups have international obligations citing PP8 of the UDHR[[7]](#footnote-7). Apart from the fact that the UDHR is not a legally binding instrument, the wording also clearly speaks of ways in which individuals and organs of society can strive to promote respect for human rights, which is qualitatively different from introducing an international obligation on these actors. The Commentary concludes *“[t]hus, there is no legal basis for sustaining the proposition that international law can impose, or even that it actually imposes, human rights duties only on State”.[[8]](#footnote-8)*While it is clear that all human beings, and therefore all groups and organs of society, have a moral responsibility, based on the inherent dignity of the human person, to respect human rights, it is inaccurate to deduce that international instruments are capable of imposing such obligations. Again, the document suffers from the *de facto* understanding that rights and duties exist only when and to the extent that they are codified by international law. It is worth noting that the Commentary distinguishes between a (moral) “responsibility” and a legal “duty”. The Draft Convention explicitly adopts the terminology of “duty […] under international law” to indicate the supposed international obligations of individuals and other non-State actors. | Article 7 – Relationship with the general **duty** [responsibility] of everyone to respect human rights under international lawNothing 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 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 [and] groups **and States** have the [responsibility, in virtue of the inherent dignity of every human person,] **general duty under international law** to refrain from participating in the violation of the right to development. [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: This sub-paragraph introduces a faulty understanding of international law and further highlights the problems inherent in the approach adopted by the Draft Convention regarding the “source” of the RTD (cf. PP21). This Article would introduce international obligations on individuals and entities that do not have international subjectivity. This would create a dangerous precedent that seems to run contrary to the basic principles of international law. Additionally, the Draft Convention remains vague concerning which subject of international law would be held responsible for the failure to fulfil the aforementioned obligations. While it might be presumed that the State in whose territory the obligations are failed to be met would be held responsible, this is further complicated by the introduction in later Articles (cf. Art. 10(a)) of the concept of effective jurisdiction or control. The Commentary seeks to justify the position that individuals and groups have international obligations citing PP8 of the UDHR . Apart from the fact that the UDHR is not a legally binding instrument, the wording also clearly speaks of ways in which individuals and organs of society can strive to promote respect for human rights, which is qualitatively different from introducing an international obligation on these actors. The Commentary concludes “[t]hus, there is no legal basis for sustaining the proposition that international law can impose, or even that it actually imposes, human rights duties only on State”. While it is clear that all human beings, and therefore all groups and organs of society, have a moral responsibility, based on the inherent dignity of the human person, to respect human rights, it is inaccurate to deduce that international instruments are capable of imposing such obligations. Again, the document suffers from the de facto understanding that rights and duties exist only when and to the extent that they are codified by international law. It is worth noting that the Commentary distinguishes between a (moral) “responsibility” and a legal “duty”. The Draft Convention explicitly adopts the terminology of “duty […] under international law” to indicate the supposed international obligations of individuals and other non-State actors.) | The Secretariat neglected to reflect the proposed deletions (“duty”, “and States”, “general duty under international law”). This is also reflected in the following text from the commentary: “ The Holy See made several proposals for this provision, such as inserting the word “and” before “groups” in the second sentence, and inserting the phrase “responsibility, in virtue of the inherent dignity of every human person” before the phrase “general duty under international law”, and finally inserting a third sentence to this provision (e.g. “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.”) The Expert Drafting Group is of the view that these proposals change the content, objective, and substance of this provision, which focuses on everyone’s responsibility to respect human rights under international law. The Revised Draft Convention cannot be interpreted in any manner that destroys, nullifies, or impairs any of the rights and freedoms in this Revised Draft Convention” (page 49). |
| Art. 8(1) | 1. States Parties undertake to respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of race, colour, sex, [**DELETE**: ~~gender~~,] language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Convention.The triple obligation of States to “respect, protect and fulfil” is based on various *General Comments* published by certain Treaty Bodies, including the *Committee on Economic, Social and Cultural Rights[[9]](#footnote-9)* (CESCR) and the *Human Rights Committee* (CCPR)[[10]](#footnote-10). These “general obligations” will be further specified in Articles 10-12.The list of factors of potential discrimination is an amalgamation of similar clauses in numerous Human Rights treaties; however, in none of the cited documents is there the inclusion of both “sex” and “gender”. | 1. States Parties undertake to respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of race, colour, sex, **gender**, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Convention. (Explanation: The triple obligation of States to “respect, protect and fulfil” is based on various General Comments published by certain Treaty Bodies, including the Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee (CCPR) . These “general obligations” will be further specified in Articles 10-12. The list of factors of potential discrimination is an amalgamation of similar clauses in numerous Human Rights treaties; however, in none of the cited documents is there the inclusion of both “sex” and “gender”.) | The Secretariat neglected to reflect the deletion of the word “gender” from the proposal. Nonetheless, the commentary seems to acknowledge that had been the intent of the proposal: “ A number of suggestions were made involving the kinds of discrimination listed in this paragraph. A significant number of suggestions related to the word “gender”, “gender identity” and “sexual orientation”. Iran suggested deletion of the word “gender”. For entirely different reasons, ADF International opined that “the explicit listing of both ‘sex’ and ‘gender’ in this provision would result in an unprecedented conceptual separation of these two notions in a United Nations human rights treaty. Such an understanding is not grounded in international human rights law per relevant treaties as well as state practice. Furthermore, it would create a situation of legal uncertainty, in that it would prevent States from clearly identifying and fulfilling the obligations incumbent upon them under existing international law”. Ecuador and the Legal Resources Centre suggested adding the words “sexual orientation” after “gender”. The Special Envoy of the UN Secretary General on Disability and Vulnerability, the National Human Rights Institute of El Salvador, the Amman Centre for Human Rights Studies, the Committee on the Rights of Persons with Disabilities, the National Human Rights Commission of Mauritius, recommended adding the words “gender identity” and “sexual orientation”/“sexuality”. However, Iran, Qatar, Nigeria, Turkey, Egypt, the Russian Federation, Pakistan, Indonesia, the Holy See, ADF International, CINGOs all oppose the inclusion of the words “gender” and/or “sexual orientation” as grounds of discrimination, observing that these are not yet recognized in international human rights treaties. The Expert Drafting Group noted the deeply contested status of these grounds of discrimination in international human rights law, and their current omission from international human rights treaties due to the extensive differences among states on these alleged bases of discrimination. Due to the contested nature of these terms and their legal status, they will not be introduced in this Revised Draft Convention to expand the prohibited grounds of discrimination under this provision” (pages 53-54). |
| Art. 8(2) | 2. States Parties shall ensure that public authorities and institutions [**DELETE**: ~~at all levels~~] act in conformity with the present Convention.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 (e.g. Art. 10(a)). | 2. States Parties shall ensure that public authorities and institutions **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 (e.g. Art. 10(a)). ) | The Secretariat neglected to reflect the deletion of “at all levels” in the proposal of the Holy See. This leads to a baffling suggestion in the commentary, on the part of the EDG, that the Holy See had introduced this provision in the first place: “The Expert Drafting Group notes the Philippines’ proposal to include the private sector as a duty bearer in advancing the right to development and in creating conditions favorable to the realization of development. This specific proposal, in the view of the Expert Drafting Group, focuses on the internal modality by which a State party can ensure realization of the right to development (e.g. especially in relation to the right to regulate as indicated in Article 3 of the General Principles). The above provision, however, refers to an external modality of inter-State cooperation, which will also be elaborated further in Article 13 of the Revised Draft Convention. The same response applies to Qatar’s proposal to reword the sentence into: “States Parties shall ensure that public authorities and institutions at all levels respect the right to development in accordance with this Convention.” This proposed sentence falls under paragraph 3 of Article 8, which draws entirely from the Holy See’s proposed sentence (e.g. “States Parties shall ensure that public authorities and institutions at all levels act in conformity with the present Convention.”).” (page 55).“Paragraph 3 is new, and drawn entirely from the proposal of the Holy See. This provision also used to be Article 12(3) of the 17 January 2020 Draft Convention. The Expert Drafting Group finds that this strengthens the general obligations of States, especially when the right to development is implicated in decision-making at all levels of governance in States.” (page 56). |
| Art. 9 | **Article 9 – General obligations of international organizations**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 that State’s or that other international organization’s obligations with regard to the right to development.This article attempts to combine Articles 14-16 of the DARIO, applying them specifically to the RTD. | Without prejudice to the general **duty** [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 that State’s or that other international organization’s obligations with regard to the right to development. (Explanation: This article attempts to combine Articles 14-16 of the DARIO, applying them specifically to the RTD.) | The Secretariat neglects to reflect the deletion of “duty” in the proposal of the Holy See.“The Holy See proposed the word “responsibility” be inserted after the phrase “general duty”. The Expert Drafting Group finds that the proposal would not strengthen the provision.” (page 58). |
| Art. 10 | **Article 10 – Obligation to respect**States Parties undertake to refrain from conduct, [**ADD**: ~~whether expressed through law, policy or practice,~~] that: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. | States Parties undertake to refrain from conduct, **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.) | The Secretariat neglects to reflect the proposal to delete “whether expressed through law, policy or practice”; in this case, however, it could be because the submitted proposal erroneously had the word “ADD” instead of “DELETE”, although the use of strikethrough should have rendered the intention of the Holy See clear.There is no mention of the proposal in the commentary. |
| Art. 10(a) | (a) Nullifies or impairs the enjoyment and exercise of the right to development within [**DELETE**: ~~or outside~~] their territories;In the negotiations that have already occurred on the text, numerous States have expressed their concern about including an obligation on States outside their territory, when no such obligation exists.  | (a) Nullifies or impairs the enjoyment and exercise of the right to development within **or outside** their territories; (Explanation: In the negotiations that have already occurred on the text, numerous States have expressed their concern about including an obligation on States outside their territory, when no such obligation exists. )  | The Secretariat neglects to reflect the proposal to delete “or outside”. Nonetheless, the intention of the Holy See is reflected in the commentary, presumably based on the explanation that had been provided on this article, and the proposal was accepted in the new draft.“China recommended deletion of the words “or outside”, a view that appears to be shared by the Holy See. The Expert Drafting Group accepts this recommendation, mindful that the same does not affect the binding effect of the right to development on a State Party’s internal and external (or extra-territorial) conduct, as specified throughout the Revised Draft Convention itself. Turkey has also sought clarification on the rights and obligations that may arise outside the territory of States” (page 58). |
| Art. 10(b) | (b) [**ADD**: **Intentionally**] impairs the ability of another State or international organization to comply with that State’s or that international organization’s obligations with regard to the right to development;For the same reasons mentioned above (Art. 10.a) the addition of “intentionally” would be useful. | (b) [Intentionally] impairs the ability of another State or international organization to comply with that State’s or that international organization’s obligations with regard to the right to development; | The Secretariat accurately reflects the proposal of the Holy See; however, the explanation as provided in Art. 10.a is not reproduced.“The Holy See proposed inserting the word “intentionally” before the word “impairs”. The Expert Drafting Group is of the view that this proposal dilutes and weakens the provision” (page 59). |
| Art. 11 | **Article 11 – Obligation to protect**States Parties shall adopt and enforce all necessary and appropriate measures, including administrative, legislative, investigative, judicial,diplomatic or others, to ensure that human or legal persons, groups or any other State or its agents they are in a position to regulate do not nullify or impair the enjoyment and exercise of the right to development within [**DELETE**: ~~or outside~~] their territories when:The broad nature of the “obligation to protect” as provided for in this Article, which includes ensuring compliance with the Convention by all groups and individuals that a given State is “in a position to regulate”, within or outside the territory of the State, is extremely problematic. Considering the approach adopted by the drafters of the Convention to include the principle of “effective control”, this article, as it stands, could be interpreted to imply that States, if and when there were to ratify the Convention, would be held responsible for actors for whom no such control can be guaranteed. | States Parties shall adopt and enforce all necessary and appropriate measures, including administrative, legislative, investigative, judicial, diplomatic or others, to ensure that human or legal persons, groups or any other State or its agents they are in a position to regulate do not nullify or impair the enjoyment and exercise of the right to development within **or outside** their territories when: (Explanation: The broad nature of the “obligation to protect” as provided for in this Article, which includes ensuring compliance with the Convention by all groups and individuals that a given State is “in a position to regulate”, within or outside the territory of the State, is extremely problematic. Considering the approach adopted by the drafters of the Convention to include the principle of “effective control”, this article, as it stands, could be interpreted to imply that States, if and when there were to ratify the Convention, would be held responsible for actors for whom no such control can be guaranteed.) | The Secretariat neglects to reflect the proposal to delete “or outside”. Furthermore, the commentary misconstrues the explanation provided by the Holy See:“China recommended deleting the words “or outside”, and Turkey has asked for clarification on the use of these terms. The Holy See as objected to the rboad nature of the obligation to protect, preferring to stand by the principle of effective control. The Expert Drafting Group reads these suggestions for Article 11 (specific to the obligation to protect) as markedly contrary to the right to development and the obligations entailed thereby, especially the external and collective dimensions. As such, the Expert Drafting Group does not recommend this deletion which fundamentally alters the essence of the right to development” (page 60).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. 11(a) | (a) Such conduct [**ADD**: ~~originates from or~~] occurs on the territory of the State Party;See above for rationale, e.g. Art 11 and Art 10. | (a) Such conduct originates from or occurs on the territory of the State Party; | The Secretariat neglects to reflect the proposal to delete “originates from or”; likewise, the explanation as provided in Art. 10 and 11 is not reproduced.There is no mention of the proposal in the commentary. |
| Art. 13(1) | **Article 13 – Duty to cooperate**1. States Parties reaffirm and undertake to implement their duty to cooperate with each other, through joint and separate action, in order to:(a) Solve international problems of an economic, social, cultural, environmental or humanitarian character;(b) Promote higher standards of living, full employment, and conditions of economic and social progress and development;(c) Promote solutions of international economic, social, health, [**ADD**: **environmental**] and related problems, and to promote international cultural and educational cooperation;(d) Promote and encourage universal respect for human rights and fundamental freedoms for all, without discrimination on any ground.The environmental pillar included in sub-point (a) should also be included in sub point (c).  | (c) Promote solutions of international economic, social, health [, environmental] and related problems, and to promote international cultural and educational cooperation; (Explanation: The environmental pillar included in sub-point (a) should also be included in sub point (c). ) | The Secretariat accurately reflects the proposal of the Holy See.“FAO suggested incorporating the words “consistent with the right of everyone to an adequate standard of living for themselves and their families, including the right to adequate food, clothing and housing” after “higher standards of living”. The Holy See proposed to add the word “environmental”. While normatively accurate, the Expert Drafting Group considered that qualifying the objective of “higher standards of living” with the corresponding human right in its full dimension makes the provision verbose. Additionally, it may become necessary to qualify the other elements also with corresponding human rights. As such, it does not recommend this inclusion here. The Expert Drafting Group is of the view that “conditions of human dignity” is broad enough to accommodate all of these concerns.” |
| Art. 13(2) | 2. To this end, States Parties recognize their primary responsibility[**ADD**: **, in a spirit of international solidarity,**] for the creation of international conditions favourable to the realization of the right to development for all, and undertake to take deliberate, concrete and targeted steps, separately and jointly, including through cooperation within international organizations, and as appropriate, in partnership with civil society:Here, in addition to responsibility, it is important to refer to the principle of international solidarity. | 2. To this end, States Parties recognize their primary responsibility [, in a spirit of international solidarity,] for the creation of international conditions favourable to the realization of the right to development for all, and undertake to take deliberate, concrete and targeted steps, separately and jointly, including through cooperation within international organizations, and as appropriate, in partnership with civil society: (Explanation: Here, in addition to responsibility, it is important to refer to the principle of international solidarity.) | The Secretariat accurately reflects the proposal of the Holy See.There is no mention of the proposal in the commentary. Nonetheless, the text of the new draft reads as follows: 2. To this end, States Parties have primary responsibility, **in accordance with the general principle of international solidarity described in the present Convention**, […]  |
| Art. 15(1) | **Article 15 – Special** [**DELETE: ~~or remedial~~**] **measures**1. State***s*** Parties recognize that certain human persons, groups and peoples, owing to their age, disability, marginalization, vulnerability, indigeneity or minority status, may require special [**DELETE:** ~~or remedial~~]measures to accelerate or achieve de facto equality in their enjoyment of the right to development.No other Human Rights treaty refers to “remedial measures”.While recognizing that special 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. | Article 15 – Special **or remedial** measures1. States Parties recognize that certain human persons, groups and peoples, owing to their age, disability, marginalization, vulnerability, indigeneity or minority status, may require special **or remedial** measures to accelerate or achieve de facto equality in their enjoyment of the right to development. (Explanation: No other Human Rights treaty refers to “remedial measures”. While recognizing that special 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.) | The Secretariat neglects to reflect the proposal of the Holy See to delete “or remedial” from the title of Article 15 and its first two sub-paragraphs. The explanation is nonetheless noted in the commentary: “The Expert Drafting Group notes the observations of the Russian Federation in its oral statement to bolster or strengthen this provision, as well as the comments of the Holy See that no other human rights treaty refers to remedial measures. The Expert Drafting Group formulated this provision mindful of the United Nations General Assembly 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. Article 23 of the International Covenant on Economic, Social and Cultural Rights provides that States Parties to the ICESCR “agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions…”.” (page 75).Curiously, the commentary claims that: “The Holy See recommended deletion of the entire second sentence” (page 76), yet there was no second sentence in the first draft of the Convention. |
| Art. 15(2) | 2. States Parties recognize that developing and vulnerable States, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require special [**DELETE:** ~~or remedial~~] measures through mutually agreed international legal instruments, policies and practices for ensuring equal enjoyment of the right to development by all human persons and peoples. Such measures may, as appropriate, include:See above. | 2. States Parties recognize that developing and vulnerable States, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require special **or remedial** measures through mutually agreed international legal instruments, policies and practices for ensuring equal enjoyment of the right to development by all human persons and peoples. Such measures may, as appropriate, include: | The Secretariat neglects to reflect the proposal of the Holy See to delete “or remedial”, which is confirmed by the following observations in the commentary: “The Holy See proposed its own sentence (e.g. “States Parties recognize that developing and vulnerable States, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require special or remedial measures through mutually agreed international legal instruments, policies and practices for ensuring equal enjoyment of the right to development by all human persona and peoples.”). The Expert Drafting Group does not find a substantial difference in the proposal, other than in the use of the word “special” and the phrase “equal enjoyment”, which do not, in themselves, improve the content of the provision.” (page 77). |
| Art. 16(2) | (b) [**ADD**: **In virtue of their equal dignity and unique contributions,]** to ensure women’s full and effective participation and [DELETE: ~~equal~~] opportunities for leadership at all levels in the conceptualization, decision-making, implementation, monitoring and evaluation of policies and programmes in political, economic and public life, and within legal persons;((d) To mainstream [**ADD**: **a**] gender perspective[~~s~~] in the formulation, adoption and implementation of all national laws, policies and practices and international legal instruments, policies and practices;All forms of violence must be condemned.Governments should be free to determine their own representation and distribution. The proposed modification to this language is an attempt to qualify the distinct contribution of women while emphasizing their equal dignity. The elimination of the word “equal” before “opportunities” would be preferable, considering that some governments may encourage parity or perhaps quotas that move beyond parity.Art. 16(2d) includes a reference to mainstreaming “gender perspectives”, which is not agreed language. Other human rights instruments make reference to mainstreaming “a gender perspective”. | [In virtue of their equal dignity and unique contributions,] to ensure women’s full and effective participation and **equal** opportunities for leadership at all levels in the conceptualization, decision making, implementation, monitoring and evaluation of policies and programmes in political, economic and public life, and within legal persons; (d) To mainstream [a] gender perspective**s** in the formulation, adoption and implementation of all national laws, policies and practices and international legal instruments, policies and practices; (Explanation: All forms of violence must be condemned. Governments should be free to determine their own representation and distribution. The proposed modification to this language is an attempt to qualify the distinct contribution of women while emphasizing their equal dignity. The elimination of the word “equal” before “opportunities” would be preferable, considering that some governments may encourage parity or perhaps quotas that move beyond parity. )(Explanation: Art. 16(2d) includes a reference to mainstreaming “gender perspectives”, which is not agreed language. Other human rights instruments make reference to mainstreaming “a gender perspective”.) | The Secretariat neglects to reflect the proposal of the Holy See to delete the word “equal” and render “perspectives” singular.“The Holy See recommended insertion of the phrase “in virtue of their equal dignity and unique contributions”, which does not, in the Expert Drafting Group’s view, strengthen the paragraph and renders it confusing, almost as if women’s full, equal, effective, and meaningful participation and equal opportunities for leadership were conditioned on their unique contributions. Likewise, CINGO’s insertion of “active, free and meaningful” before the word “participation” does not strengthen the paragraph.” (page 82)No mention is made of the Holy See’s proposal to modify Art. 16(2d). |
| Art. 17(1) | **Article 17 – Indigenous and tribal peoples**1. [**ADD**: **In virtue of the inherent and universal dignity of every human person,**] indigenous and tribal peoples have the right to freely pursue their economic, social and cultural development. They have the right to determine and develop priorities and strategies for exercising their right to development.For the reasons mentioned above (cf. Artt. 3(a) and 4(1)), it would be preferable to make a reference to the dignity of the human person as the basis for the rights enjoyed collectively by a group of people. | 1. [In virtue of the inherent and universal dignity of every human person,] indigenous and tribal peoples have the right to freely pursue their economic, social and cultural development. They have the right to determine and develop priorities and strategies for exercising their right to development. (Explanation: For the reasons mentioned above (cf. Artt. 3(a) and 4(1)), it would be preferable to make a reference to the dignity of the human person as the basis for the rights enjoyed collectively by a group of people.) | The Secretariat accurately reflects the proposal of the Holy See.There is no mention of the proposal in the commentary, although the comments made under articles 3(a) and 4(1) could be presumed to be a response. |
| Art. 21(2) | 2. To that end, States Parties undertake to pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control so that the world’s human, ecological, [**ADD**: **technological**] and economic resources can be used for the full realization of the right to development for all[**ADD**:**, contributing in this way to the establishment, maintenance and strengthening of peace and security at all levels**.]The inclusion of technology as well as a reference to the pursuit of peace and security would bring this document in line with the 2030 Agenda for Sustainable Development. | 2. To that end, States Parties undertake to pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control so that the world’s human, ecological, [technological] and economic resources can be used for the full realization of the right to development for all [, contributing in this way to the establishment, maintenance and strengthening of peace and security at all levels.] (Explanation: The inclusion of technology as well as a reference to the pursuit of peace and security would bring this document in line with the 2030 Agenda for Sustainable Development. ) | The Secretariat accurately reflected the proposal of the Holy See. “The Expert Drafting Group accepts the Holy See’s proposal to include the word “technological” in paragraph 2 of this draft Article 22.”While not commenting on the proposal to add a final phrase, the EDG did add a new third paragraph in the new draft on peace, combing it with “inclusiveness: ***Art. 21.3. States Parties undertake to promote peace and inclusive societies within their territories for the full realization of the right to development for all.*** |
| Art. 22 | **Article 22 – Sustainable development**States Parties, individually and jointly, undertake to ensure that:(a) Laws, policies and practices relating to development at the national and international levels pursue and contribute to the realization of sustainable [**ADD**: **and integral**] development;(b) Their decisions and actions do not compromise the ability of future generations to realize their right to development;(c) The formulation, adoption and implementation of all such laws, policies and practices aimed at realizing sustainable [**ADD**: **and integral**] development are madefully consistent with the provisions of the present Convention.Art. 22 translates the affirmation of PP6 and Art. 3(e-f) into a legal obligation to ensure that efforts to promote the RTD lead to true and sustainable development. From the perspective of the Holy See, it would be preferable to include a reference to integral development. | (a) Laws, policies and practices relating to development at the national and international levels pursue and contribute to the realization of sustainable [and integral] development; (c) The formulation, adoption and implementation of all such laws, policies and practices aimed at realizing sustainable [and integral] development are made fully consistent with the provisions of the present Convention(Explanation: Art. 22 translates the affirmation of PP6 and Art. 3(e-f) into a legal obligation to | The Secretariat accurately reflected the proposal of the Holy See.“The Holy See proposed inserting the words “and integral” before the word “development” in subparagraph (a) of this Article 23. The Expert Drafting Group understands the Holy See’s internal use of the phrase “integral development” or “integral human development”, but finds that this phrase is idiosyncratic to the practices and laws within the Holy See and is not enshrined or recognized yet in existing international law, whether in the 1986 Declaration on the Right to Development or all other norms of international human rights law in treaties or customary international law. It may well be the case that this phrase may gain acceptance and become part of human rights law in the future – in which case the language of subparagraph (a) in referring to “human rights law” will not foreclose the possibility of considering this phrase. At this juncture, however, introducing this phrase would bring both ambiguity and confusion to the provision on sustainable development in this Article 23.” (page 89).“The Holy See proposed the insertion of the word “integral” before the word “development” [in subparagraph d of draft Article 23]. For reasons previously discussed, the Expert Drafting Group declines the suggestion.” (page 90). |
| Art. 23(1) | **Article 23 – Harmonious interpretation**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~~.]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. | 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. **To that end, 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. ) | The Secretariat did not reflect the proposal of the Holy See to delete the final phrase of Article 23(1).“The Holy See observed that “it is inappropriate in a legally binding instrument to define the obligations of another international body”. The Expert Drafting Group submits that the above formulation does not do that. When the right to development is enshrined in a human rights treaty through an approved Convention, it forms part of international human rights law, which the United Nations is obligated to promote under Article 1(3), Article 55 and 56 of the Charter of the United Nations.” (page 91) |
| Art. 23(2) | 2. The provisions of the present Convention shall not affect the rights and obligations of any State Party deriving from any existing international agreements, except where the exercise of those rights [**DELETE**: ~~and obligations~~] would contravene the object and purpose of this Convention. The present paragraph is not intended to create a hierarchy between the present Convention and other international agreements.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 | . 2. The provisions of the present Convention shall not affect the rights and obligations of any State Party deriving from any existing international agreements, except where the exercise of those rights **and obligations** would contravene the object and purpose of this Convention. The present paragraph is not intended to create a hierarchy between the present Convention and other international agreements. (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.) | The Secretariat did not reflect the proposal to delete “and obligations”.There is no mention of the proposal in the commentary. |
| Art. 24(2) | 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:[…](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.The periodic reports of States Parties under Art. 24(2a) are intentionally voluntary. There is no obligation to present such reports, nor a recommendation as to their frequency or form. The Commentary affirms that this is to create a collaborative – and not an adversarial – character to the Convention.The proposed modification seeks to limit the scope of the functions and activities that the Conference in this regard. | 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 [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:(g) Exercise such other functions [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. Comment: The periodic reports of States Parties under Art. 24(2a) are intentionally voluntary. There is no obligation to present such reports, nor a recommendation as to their frequency or form. The Commentary affirms that this is to create a collaborative – and not an adversarial – character to the Convention. (Explanation: The proposed modification seeks to limit the scope of the functions and activities that the Conference in this regard. ) | The Secretariat accurately reflected the proposal of the Holy See.There is no mention of the proposal in the commentary. |
| Art. 24(6) | 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~~.]* 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 with the Rules of Procedure of the Conference
 | 6. The Conference of States Parties shall be held annually **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 with the Rules of Procedure of the Conference) | The Secretariat did not reflect the proposal of the Holy See to delete “as part of the sessions of the Working Group on the Right to Development”There is no mention of the proposal in the commentary. |
| Art. 24(8) | 8. The Conference of States Parties shall transmit its reports to the General Assembly, the Economic and Social Council, the Human Rights Council, [**ADD**: **and other relevant bodies of the UN**] [**DELETE**: ~~the Working Group on the Right to Development and the high-level political forum on sustainable development~~.]For similar reasons to those listed above (Art. 24(6)), it would seem more appropriate to make general reference to “other relevant bodies of the UN” so as to avoid such references from becoming obsolete. | 8. The Conference of States Parties shall transmit its reports to the General Assembly, the Economic and Social Council, the Human Rights Council, [and other relevant bodies of the UN] **the Working Group on the Right to Development and the high-level political forum on sustainable development**. (Explanation: For similar reasons to those listed above (Art. 24(6)), it would seem more appropriate to make general reference to “other relevant bodies of the UN” so as to avoid such references from becoming obsolete.) | The Secretariat did not reflect the proposal of the Holy See to delete “the Working Group on the Right to Development and the high-level political forum on sustainable development”.“The Holy See’s proposal of referring to “other relevant bodies of the UN” is welltaken, but for this purpose, it is deliberate on the part of the Expert Drafting Group to require reportorial transmittal to key entities within the UN that would have the greatest stake in examining the status of realization of the right to development. If such entities become functus officio, then the obligation to transmit such reports will not necessarily subsist without amendment of this provision” (page 95). |
| Art. 26(3) | 3. The implementation mechanism shall:(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**]For the reasons mentioned under Art. 24(2g), it seems necessary to limit the potential additional functions of the implementation mechanism. | (d) Undertake any other functions that may be vested by the Conference of States Parties [and that lie within the purview of the Convention]. (Explanation: For the reasons mentioned under Art. 24(2g), it seems necessary to limit the potential additional functions of the implementation mechanism.) | The Secretariat accurately reflected the proposal of the Holy See.There is no mention of the proposal in the commentary; nonetheless, the new draft adds similar language to subparagraph (c): *Art. 26.3(c) Review requests by rights holders to comment on situations in which their right to development has been adversely affected by the failure of States to comply with their duty to cooperate, as reaffirmed and recognized under the present Convention,* ***within the mandate established for this purpose by the Conference of States Parties;****.* |

1. Cf., for example, “All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security”, Charter of the OAS, Art. 45(a). [↑](#footnote-ref-1)
2. *“Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,”* [↑](#footnote-ref-2)
3. A/RES/53/144 of 9 December 1998. [↑](#footnote-ref-3)
4. A/HRC/WG.2/21/2/Add.1, Commentary §3 to Article 3, p. 24. [↑](#footnote-ref-4)
5. *“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.”* [↑](#footnote-ref-5)
6. Cf. A/CONF.157/24 (Part I), Chap. III, §5. [↑](#footnote-ref-6)
7. *“[…] every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance […]”* [↑](#footnote-ref-7)
8. A/HRC/WG.2/21/2/Add.1, Art. 7, § 4. [↑](#footnote-ref-8)
9. General Comment 12, § 15; General Comment 15, § 25. [↑](#footnote-ref-9)
10. General Comment 31, § 8. [↑](#footnote-ref-10)