**Overview of Comments and Textual Suggestions for the Revised Draft Convention**

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1. **Introduction**

Our Working Group Chair-Rapporteur, Ambassador Akram, distinguished representatives of States and Members of the Open-Ended Intergovernmental Working Group on the Right to Development, members of civil society organizations, colleagues at the UN Office of the High Commissioner for Human Rights, and fellow Experts at the Drafting Group: it is an honor to be present and be with you again here today, this time to discuss the Revised Draft Convention on the Right to Development. We at the Drafting Group are grateful for all who engage and have engaged in the consultative process of review, spearheaded by Ambassador Akram who provides valuable direction and guidance to the Drafting Group. It has been our privilege at the Expert Drafting Group to work collaboratively, expeditiously, and consistently for several years together since 2019, which led to the 17 January 2020 Draft Convention on the Right to Development up to the present 6 April 2022 Revised Draft Convention on the Right to Development, where we have devoted our expertise in international law, international human rights law, international economic development law for this process. To this end, permit me to thank our former chair, Professor Mihir Kanade (Head of the Department of International Law and Human Rights at the University of Peace in Costa Rica and current Member of the Expert Mechanism on the Right to Development), Judge Margarette Macaulay (current Commissioner at the Inter-American Commission on Human Rights, former Judge at the Inter-American Court of Human Rights, and former President of the Inter-American Commission on Human Rights), Professor Koen De Feyter (Professor of International Law at the University of Antwerp and Chair of the Expert Mechanism on the Right to Development), and Professor Makane Mboise Mbengue (Professor of International Law at the Faculty of Law of the University of Geneva, President of the African Society of International Law, and Member of the Curatorium of the Hague Academy of International Law).

Permit me first to extend my apologies to all in the Working Group that the Commentaries for the Revised Draft Convention were released on 16 May 2022, owing to serious medical reasons on my end that unfortunately intervened in the past weeks. I thank everyone for their forbearance on this point. Turning now to the Revised Draft Convention itself, while you have both the Revised Draft Convention and the Commentaries already uploaded at the webpage for this 23rd Session, I will now provide you an overview of how the Expert Drafting Group responded to all submissions, comments, and textual suggestions on the 17 January 2020 Draft Convention on the Right to Development, leading to the 6 April 2022 Revised Draft Convention presently under consideration before the Open-Ended Intergovernmental Working Group on the Right to Development.

Our responsibility as the Expert Drafting Group arises from the request of the Human Rights Council in Resolution 48/10 for Chair-Rapporteur Akram to engage experts to assist in the preparation of the revised draft convention on the right to development. Paragraph 12 of the same Human Rights Council Resolution states that the High Commissioner for Human Rights is requested to engage experts “for their continued provision of necessary advice, inputs, and expertise to the Chair-Rapporteur in fulfilment of his mandate and the preparation of the revised draft convention on the right to development, to facilitate the participation of experts in the twenty-third session of the Working Group, and to provide advice with a view to contributing discussions on the elaboration of a draft convention on the right to development, a**s part of the implementation and realization of the right to development.**” (Emphasis added.)

In this context, the advice, inputs, and expertise we have rendered as the Expert Drafting Group, in support of the Chair-Rapporteur’s mandate in the preparation of this Revised Draft Convention on the Right to Development, have taken as our guidance the Human Rights Council’s Resolution that such a draft convention is to be elaborated a**s part of the implementation and realization of the right to development.** This focus on realization and implementation of the right to development implicates three necessary inquiries to the Expert Drafting Group as a matter of international law:

1. **Defining the scope and substantive content of the right to development,** traceable to its initial articulation in the 1986 Declaration on the Right to Development, as well as extending due regard for the subsequent recognition and practice of the right in other international treaties and international jurisprudence, as well as softer international instruments produced in the United Nations system, regional bodies, or national contexts. Thus, while we have, as an Expert Drafting Group, closely hearkened to the original text of the 1986 Declaration on the Right to Development as an authoritative elaboration, we are by no means limited to this text alone due to the evolution of international law and international human rights law. This means that, when the Expert Drafting Group wrote and reviewed the 17 January 2020 Draft Convention on the Right to Development as to the scope and substantive content of the right to development, it was always both retrospective and prospective in its approach: we looked at both the 1986 Declaration on the Right to Development, and then to subsequent evolutions in treaties and jurisprudential practices, to provide the clearest possible elaboration of the state of international law on the right to development as a human rights norm and an international law norm that exists in some treaties, and are recognized in other jurisprudence (regional or national) as evidence of the existence of the right as customary international law. The Expert Drafting Group’s codification of the scope and substantive content of the right to development, both from the 6 January 2020 Draft Convention on the Right to Development up to the 6 April 2022 Revised Draft Convention on the Right to Development, is premised on that precise evolutive understanding of international law and international human rights law as it involves the right to development. As established by the 1986 Declaration on the Right to Development, such development has to be centered on the human person. The scope and substantive content of the right to development necessarily flows from understanding the centrality and dignity of the human person as both an active subject and beneficiary of development.
2. **Determining essential features, factors, or conditions necessary for the realization of the right to development**, which again draws inspiration from the 1986 Declaration on the Right to Development but is not in any way limited to that retrospective examination. The 17 January 2020 Draft Convention, as does the 6 April 2022 Revised Draft Convention, recognizes systemic, structural, as well as specific, obstacles to the participation in, contribution to, and enjoyment of development by individuals as well as peoples. To the extent that the 17 January 2020 Draft Convention and the 6 April 2022 Revised Draft Convention elaborated such obstacles as seen from and affirmed under international human rights law and jurisprudence, as well as general international law, provisions on general obligations and obligations to respect, protect, and fulfil/facilitate the right to development were crafted in a manner that was cognizant of the obstacles to realization of the right to development for individuals and peoples. Thus, the cornerstone of the draft Convention (in both its 17 January 2020 version and the 6 April 2022 Revised version) is its intentional recognition of the centrality of the linkages of inalienability, indivisibility, interdependence, and interrelatedness between the right to development and all other human rights and fundamental freedoms under international human rights law. Rather than approach development as a narrow or siloed concept of raw economic growth, the Expert Drafting Group took inspiration from the 1986 Declaration on the Right to Development’s motivation to ensure that human persons were both active subjects and beneficiaries of development. As active subjects under international law and international human rights law under existing international law that recognizes the legal status of individuals and peoples, the Expert Drafting Group understood that support, through this draft Convention, is crucial for the independent judgment and decision-making agency available to individuals and peoples in both the process of development decision-making as well as in evaluating the outcomes of development decision-making in particular contexts. To this end, the 1986 Declaration on the Right to Development text was supplemented with texts from existing treaties, international instruments at the United Nations, as well as international jurisprudence, addressing vulnerabilities, discrimination, and marginalization in various forms. Thus, both the 17 January 2020 Draft Convention and the 6 April 2022 Revised Draft Convention contain innovations through specific provisions, such as those that already exist under international law at present as to sustainable development, the prevention of corruption, the protection of indigenous peoples, the equality between and among women and men, specific and remedial measures for certain groups rendered vulnerable due to many bases of discrimination, among others.
3. **Elaborating the architecture necessary for the implementation of the right to development.** The Expert Drafting Group is well aware of the spectrum of possibilities and modalities for human rights implementation, and the particular complexity of the right to development as one that is inalienable and indivisible from, interdependent and interrelated with, all other human rights and fundamental freedoms. The architecture for the implementation of this right, therefore, takes inspiration from the diversity of models and pathways to development, while remaining fully cognizant that States and non-State actors retain their existing treaty and customary international law obligations under international law and international human rights law (including climate change law, international environmental law, international labour law, among others). The crucial foundation of this architecture is in the definition of the right to development in Article 4(1) and 4(2), read in relation to the general obligations and obligations to respect, protect, promote and fulfil the right to development from Articles 8-12, as well as the elaborated duty to cooperate under Article 13, as well as the relationship of the right to development with the right to self-determination (Article 5) and all other human rights (Article 6). Noting that everyone has the minimum duty and responsibility to respect human rights under international law (Article 7), more contextualized obligations have been crafted pertaining to States (Articles 8-12) as well as what States recognize in regard to the conduct of international organizations (Article 9), coercive measures (Article 14), and specific and remedial measures (Article 15). The architecture for implementing the right to development involves engaging multiple stakeholders, both State and non-State, across a spectrum of cooperative, informational, data-driven, and collaborative processes through the Conference of State Parties. The Expert Drafting Group is well aware of various accountability-driven models in other international human rights treaties that have provided for counterpart treaty mechanisms that possess their own communications and reportorial procedures, but note that these methods may not fully capture the needs for implementation of the right to development on their own. By ensuring the active institutional involvement of States in the Conference of States Parties to establish their own implementation and/or accountability mechanisms, the Expert Drafting Group itself departs from top-down or harder approaches that characterize previous international human rights treaties, in favor of more localized, grassroots-driven, potentially more collaborative and cooperative approaches that could be determined more flexibly under a Conference of States Parties, similar to many models that exist in international environmental law. This does not, after all, preclude the same Conference of States Parties from creating more accountability-driven structures, should the need and inclination arise from States themselves in determining the best paths for effective implementation of the right to development as it evolves over time.

In light of the above three continuing inquiries for the Expert Drafting Group pursuant to the Human Rights Council’s request to the High Commissioner to engage experts on the elaboration of the revised draft convention and to provide advice to the Chair-Rapporteur on the realization and implementation of the right to development, the Expert Drafting Group approached its duties under three guidelines or considerations in reviewing State and non-State submissions on the 17 January 2020 Draft Convention on the Revised Draft Convention:

1. Proposed revisions or amendments that strengthened and improved the text consistently with existing international law were accepted. Recommendations that ultimately weakened the text due to inconsistency with existing international law, or by introducing further challenges to the effective implementation of the draft Convention, were cautiously reviewed and scrutinized by the Expert Drafting Group.
2. Proposed revisions that simply repeated or duplicated provisions in the draft Convention were not accepted. Any proposed revisions that would be contrary to existing international law or would result in a conflict or outright breach of existing international law were avoided as much as possible.
3. Proposed revisions that sought contextual elaboration of the draft Convention text were noted for possible inclusion in the commentaries to the Revised Draft Convention. Only suggestions that were relevant to the context of the provision concerned were accepted.

All submissions were extensively considered and deliberated on by the Expert Drafting Group before revisions were undertaken. The 6 April 2022 Revised Draft Convention on the Right to Development reflects the full consideration of all submissions made to the Expert Drafting Group, and their consistency with existing international law and applicable international law jurisprudence, especially in light of treaty practices, interpretive practices, recommendations made, and decisions reached in other human rights treaty bodies and special procedures within the United Nations human rights system that bear on interrelated, indivisible, and interdependent rights with the right to development. The comparison of revisions to the 17 January 2020 Draft Convention through the 6 April 2022 Revised Draft Convention were attached as Annex A to the Commentaries.

1. **Specific and structural revisions**

While each of the members of the Expert Drafting Group will have occasion to discuss the particulars of every textual revision in the 6 April 2022 Revised Draft Convention, let me outline some of the following general contours of the revisions:

1. Retention of the title “Convention on the Right to Development”;
2. Restructuring of the Preamble, shifting from the initial inductive approach (which described all the antecedents of the right to development) towards a more deductive approach (drawing from purposes, principles, and obligations under the Charter of the United Nations, the Universal Declaration of Human Rights, human rights treaties, international instruments that specifically referred to the right to development, the 1986 Declaration on the Right to Development, various international instruments and resolutions thereafter that affirm the right to development, the practices of the Human Rights Council and the General Assembly in relation to the right to development, to regional treaty practices on the right to development, to the concept of sustainable development and Agenda 2030, to the acknowledgment of the realization of the right to development as a common concern of humankind, the understanding of obstacles to development, the inalienability of the human right to development, the nature of development, the universality, inalienability, interdependence, and interrelatedness that characterizes all human rights, onwards to considerations of peace and security, good governance and the rule of law, the centrality of the human person as the subject of the development process and main participants and beneficiaries of development, onwards to the duties of States and international organizations under existing international law and the necessity for the comprehensive and integral international convention to promote and secure the realization of the right to development);
3. Textual revisions to the General Principles under Article 3, which are intended to achieve the Object and Purpose of the Convention and implement the Convention;
4. The definition of the human right to development in Article 4 that recognizes its linkages with all other human rights and fundamental freedoms;
5. The linkage of the right to development in Article 5 with the right of peoples to self-determination;
6. The reaffirmation of the relationship of the right to development with all other human rights in Article 6;
7. The baseline responsibility of everyone to respect human rights, including the right to development, as clarified in Article 7;
8. General obligations of States Parties and prohibited grounds of discrimination under Article 8;
9. General obligations of international organizations, as recognized by States Parties to the Convention, under Article 9;
10. The specific obligation to respect the right to development under Article 10;
11. The specific obligation to protect the right to development under Article 11;
12. The specific obligation to fulfil the right to development under Article 12;
13. The duty to cooperate under Article 13;
14. Coercive measures under Article 14;
15. Specific and remedial measures under Article 15;
16. Equality between men and women under Article 16;
17. Indigenous peoples under Article 17;
18. A new provision on the prevention and suppression of corruption under Article 18;
19. Impact assessments, statistics, and data collection in Articles 20-21;
20. A more robustly elaborated provision on international peace and security in Article 22; and
21. A new provision on sustainable development in Article 23;

These are only some of the main features of revisions under the 6 April 2022 Revised Draft Convention. The Expert Drafting Group and I are at your disposal during this 23rd session to discuss each specific textual revision, in line with the commentaries to the 6 April 2022 Revised Draft Convention. We welcome all exchanges and discussions this week.