**23rd Session of the Working Group on the Right to Development
-
 Consideration of Draft Convention on the Right to Development**

 **Oral Statements delivered by ADF International (ECOSOC registered name ‘Alliance Defending Freedom’)**

**Part III:**

* Article 13, paragraph 4(e)

	+ The aim of increasing the availability of high-quality, timely and reliable data requires that such data be disaggregated based on objective categories. In this regard, the inclusion of ‘gender’ among the listed categories introduces unnecessary ambiguity into the provision as there is no clarity about the definition of the concept under international human rights law. Accordingly, any data disaggregated on the basis of ‘gender’ would lack the necessary objectivity, consistency, accuracy and reliability, and could produce biased outcomes that may further exacerbate existing inequalities. In line with previous revisions made by the Working Group in Articles 8 and 16 of the draft convention, ADF International recommends that in Article 13, paragraph 4, subparagraph (e) of the draft convention, the term ‘gender’ be replaced by ‘sex’, whose absence from the listing is unjustified.
* Article 16, paragraph 1

	+ In the interest of streamlining the text, the formulation “equality *for all* women and men”, should be aligned the revised title of the Article 16, namely ‘equality between men and women’. Along similar line, we recommend streamlining the phrase ‘end all forms of discrimination against all women and girls everywhere’ so that it reads ‘end all forms of discrimination against women and girls’. In particular, the removal of the term ‘everywhere’ would help avoid confusion as to the territorial scope of States Parties’ obligations.
* Article 16, paragraph 2(d)
* In keeping with the spirit of Article 16, this subparagraph should unequivocally reflect the need to incorporate and mainstream the perspectives of women and girls into national and international decision-making at all levels. We therefore recommend that the term ‘gender perspectives’ be replaced with ‘the perspectives of women and girls.’

**Part IV:**

* Article 25, paragraph 2(a)
* The effectiveness of the periodic review process depends on the independence of the body charged with examining reports by States Parties. The institutional setup of the treaty bodies envisaged by the Expert Drafting Group is inconsistent with the existing core international human rights instruments, given that this function is entrusted to the respective monitoring bodies. The provision that the Conference of States Parties may refer States Parties’ reports to the implementation mechanism contemplated under article 26 of the present Convention may inter alia imply a potential difference of treatment. We reiterate that such determination must be made as part of this negotiation and not deferred until the first meeting of the Conferences of States Parties, and that the implementation mechanism should have original competence in this regard. Depriving the implementation mechanism of this function would not only effectively compromise its primary *raison d’être*, that is, to monitor progress made by each State Party in ensuring compliance with their treaty obligations; it would also be in flagrant violation of the principle of independence of human rights treaty bodies, which is essential for the performance of their duties and responsibilities.

Accordingly ADF International recommends the deletion of paragraph 2(a) of Article 25.

* Article 27, paragraph 3
* The express recognition of an institutional competence on the part of the implementation mechanism to ‘assist in the interpretation of the provisions of the treaty’ has no precedent in any international human rights instrument adopted within the framework of the United Nations. In fact, for each of the core international human rights instruments there is a only recognized competence upon the relevant treaty bodies to prepare “comments”, “suggestions” or “recommendations” based exclusively on the examination of the reports and information received from the States Parties. Nowhere is provision made for such general comments or observations to apply evolutionary interpretations of treaty provisions, nor to bear a normative guidance role with regard to their implementation.
It is well-known that rather than being mandated by the relevant treaties, the evolution of general comments into alleged “sources of evolutionary interpretation” of treaty obligations, took place as a result of the self-regulatory prerogatives accorded to treaty monitoring bodies under their respective constitutive instruments, and that in a number of cases such interpretations stand in flagrant contradiction with the established rules of interpretation of treaties as set forth in the Vienna Convention on the Law of Treaties and in customary international law. It is not by chance that States have often put on record their rejection of such documents.
Without an express conferral of competence to consider the periodic reports submitted by States Parties, and in the absence of an explicit requirement that the content of general comments or recommendations be based on the information contained in such reports, the implementation mechanism would not only lack the necessary experience, but also the legitimacy to issue general comments or recommendations of any kind.

For this reason, ADF recommends that Article 27, paragraph 3 read as follows:

'The implementation mechanism shall:

**(a) Periodically examine reports by States Parties on the implementation of their obligations under the Convention, and in this regard to make such suggestions and general recommendations on these reports as it may consider appropriate;**

(b) ~~Adopt general comments or recommendations to assist in the interpretation or implementation of the provisions of the Convention~~ **In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention, make suggestions and general recommendations based on information received pursuant to subparagraph (a);**

**(c) Transmit to any State Party concerned and report to the General Assembly its suggestions and general recommendations under subparagraphs (a) and (b), together with comments, if any, from States.**’