**Draft Convention on the Right to Development\***

**\* Brazil reserves itself the right to present further comments and suggestions to any part of the draft in the future sessions of the Working Group.**

PP12 *Recalling* the provisions of all human rights treaties, including the International Covenants on Human Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disability, the International Convention on the Elimination of all Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women;

PP12Bis *Taking note of* all human rights declarations, including the Declaration on the Rights of Disabled Persons, the Declaration on Race and Racial Prejudice, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Declaration on the Rights of Indigenous Peoples, the Declaration on the Rights of Peasants and Other People Working in Rural Areas, the Declaration on Social Progress and Development, the Universal Declaration on the Eradication of Hunger and Malnutrition, the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind

PP16 *Taking note of* the multitude of resolutions adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council on the right to development,

**Article 10 – Obligation to respect**

States Parties undertake to refrain from [INTERNATIONALLY] UNLAWFUL conduct, whether expressed through [DOMESTIC] law, policy or practice, that:

(…)

**Article 11 – Obligation to protect**

States Parties shall adopt and enforce all necessary, ~~and~~ appropriate AND REASONABLE measures, including administrative, legislative, investigative, judicial, diplomatic or others, CONDUCIVE TO ENSURING ~~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:

(…)

**Article 14 – Coercive measures**

1. The use or encouragement of the use of UNLAWFUL economic, political or any other type of measure to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights in violation of the principles of the sovereign equality of States and freedom of consent constitutes a violation of the right to development.

2. States Parties shall refrain from adopting, maintaining or implementing the UNLAWFUL measures referred to in paragraph 1.

**Article 17 – Indigenous and tribal peoples**

1. 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.

2. States Parties shall consult the indigenous and tribal peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly. **(From the ILO Convention 169, article 6)**

3. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. **(From the ILO Convention 169, article 6)**

Comment: Regarding article 17, the original language of the draft would create a new right since the principle of “free, previous and informed consent” has not been included in any legally binding instrument so far. On the contrary, it is not compatible with the provisions of the ILO Convention 169, a legally binding instrument currently in force. We understand there are different views on this issue, what makes it a controversial one. Ours, nonetheless, is based on many ILO’s documents we would be glad to provide.

**[Part IV]**

Comment: Brazil suggests the deletion of Part IV as a whole.

**[Article 24 – Conference of States Parties]**

**[**1. A Conference of States Parties is hereby established.**]**

**[**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 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:**]**

**[** (a) Periodically examine reports by States Parties on the implementation of their obligations under the Convention and the obstacles that they face in the realization of the right to development, in the light of the object and purpose of the Convention. In this regard, the Conference of States Parties may refer such reports to the implementation mechanism contemplated under article 26 of the present Convention;**]**

**[** (b) Promote and facilitate the open exchange of information on measures adopted by States Parties to address the realization of the right to development, taking into account the differing circumstances, responsibilities and capabilities of States Parties and their respective obligations under the Convention;**]**

**[** (c) Promote, develop and periodically refine, in accordance with the provisions of the present Convention, the methodologies and best practices for States Parties to assess the status of realization of the right to development;**]**

**[** (d) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and governmental and non-governmental bodies;**]**

**[** (e) Consider and adopt regular reports on the status of implementation of the Convention, and ensure their publication;**]**

**[** (f) Make recommendations on any matters relevant to the implementation of the Convention, including, inter alia, the adoption of protocols or amendments;**]**

**[** (g) Exercise such other functions as are required for the achievement of the object and purpose, as well as the aims, of the Convention.**]**

**[**3. The first session of the Conference of States Parties shall be convened by the Secretary-General of the United Nations no later than six months after the entry into force of the present Convention. At its first session, the Conference of States Parties shall adopt its own rules of procedure, which shall include decision-making for matters not already stated in the Convention.**]**

**[**4. The Conference of States Parties shall meet in public sessions, except as otherwise determined by it, in accordance with its rules of procedure.**]**

**[**5. All States not party to the present Convention, specialized agencies, funds and programmes of the United Nations system, other international organizations, United Nations human rights mechanisms, regional human rights bodies, national human rights institutions, and non-governmental organizations with consultative status with the Economic and Social Council may participate as Observers in the public sessions of the Conference of States Parties. The Conference of States Parties may, in accordance with its rules of procedure, consider requests from, or may invite, other stakeholders to participate as Observers.**]**

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

**[**7. Special sessions of the Conference of States Parties shall be held at such other times as it may deem necessary, or upon the request of any State party, in accordance with its rules of procedure.**]**

**[**8. The Conference of States Parties shall transmit its reports to the General Assembly, the Economic and Social Council, the Human Rights Council, the Working Group on the Right to Development and the high-level political forum on sustainable development.**]**

**[Article 25 – Protocols to the Convention]**

**[**1. The Conference of States Parties may adopt protocols to the present Convention.**]**

**[**2. The text of any proposed protocol shall be communicated to States Parties at least six months before such a session.**]**

**[**3. The requirements for the entry into force of any protocol shall be established by that instrument.**]**

**[**4. Decisions under any protocol shall be taken only by the States Parties to the protocol concerned.**]**

**[Article 26 – Establishment of an implementation mechanism]**

**[**1. At its first session, the Conference of States Parties shall establish an implementation mechanism to facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the present Convention.**]**

**[**2. The implementation mechanism shall consist of independent experts, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems and balanced gender representation.**]**

**[**3. The implementation mechanism shall:**]**

**[**(a) Adopt general comments or recommendations to assist in the interpretation or implementation of the provisions of the Convention;**]**

**[**(b) Review obstacles to the implementation of the Convention at the request of the Conference of States Parties;**]**

**[**(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;**]**

**[**(d) Undertake any other functions that may be vested by the Conference of States Parties.**]**

**[**4. The Conference of States Parties shall adopt rules of procedure for the operation of the implementation mechanism.**]**