**FAO Comment to the Draft Convention on the Right to Development**

FAO compliments the Chair of the Intergovernmental Working Group on the Right to Development for the submission of the Draft Convention on the Right to Development and thanks OHCHR for the opportunity to provide comments to the draft.

FAO supports the overall content and structure of the Draft Convention and specifically welcomes the inclusion of Art. 3(c) on the need to apply a human rights-based approach to achieve the object and purpose of the Convention the inclusion of Art. 8.1 on the three levels of obligations (respect, protect, fulfil) as well as Articles 16 and 17 on gender equality and indigenous and tribal peoples, respectively.

Notwithstanding the support given to the Convention, FAO would like to make the following comments to the Draft Convention:

1. FAO welcomes **Para. 2 of the Preamble to the Convention**, highlighting the **existence of serious obstacles to the realization of the right to development**, and suggests adding ‘discrimination’ to the list of obstacles, given the tremendous negative impacts discrimination on multiple grounds has for many persons’ and peoples’ right to development:

Preamble, Para. 2: *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, [ADD: discrimination,] conflicts, aggression and threats against national sovereignty, national unity and territorial integrity, and the denial of other human rights,

1. FAO welcomes the reference made in **Para. 10 of the Preamble** and in **Art.13.1(b)** to the obligation of States under the UN Charter to take joint and separate action for the **promotion of higher standards of living** and suggests reiterating in the Convention the corresponding “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (ICESCR Art. 11.1), given the fundamental importance of the right to an adequate standard of living for the full enjoyment of the right to development and the strong linkages between the two rights.

Article 13.1(b) “Promote higher standards of living [ADD, 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], full employment, and conditions of economic and social progress and development”

1. In the list of **Summits** mentioned in Para. 14 of the Preamble, FAO suggest it would be relevant to also add references to the 1996 World Food Summit, the 2009 World Summit on Food Security and the 2014 Second International Conference on Nutrition.
2. FAO strongly supports the reference to **human rights-based approaches** in Article 3. It wonders whether the use of “people” in the singular and without capitalization could give rise to confusion. It could be misunderstood as referring to the plural of “person” generally, rather than to the rights of Peoples under international law. In UNDRIP and the African Charter on HPR it is clear that the reference is to particular groups, which constitute a “people”.
3. FAO also strongly supports the interrelatedness of all human rights, civil, cultural, economic, political and social, but notes that unlike how the Convention is generally drafted, in Article 4.1, the pre-Vienna Declaration listing is used. FAO prefers the more modern way of listing rights.
4. With regard to the phrasing of Article 7, line 3: “…aimed at the destruction of any of the rights…”, we would recommend, in accordance with existing human rights lexicon, this be reformulated as: “aimed at the nullification or impairment of any of the rights...”
5. FAO welcomes the spelling out of the obligations of state to **respect, protect and fulfil** human rights. However, with regard to Article 12 (fulfil) it is not clear why the obligation to fulfil is not further divided, which would enhance clarification. The subdivision could be into facilitate and provide, or promote, facilitate and provide.
6. FAO strongly supports the emphasis given in **Art. 15.1** to the **special needs of human persons, groups and peoples in vulnerable or marginalized situations** and suggests adding a clause on the corresponding States Parties’ obligations (paralleling CERD Art. 2.2):

Art. 15.1: “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. [ADD: States Parties shall, when the circumstances so warrant, take such measures to ensure for all the full and equal enjoyment of the right to development.]

1. Furthermore, while also welcoming a specific Article 16 on gender equality, there are ways in which the article could be further strengthened. On the one hand, the article could specifically require states to makes sure that customary and religious norms in areas such as inheritance, ownership and administration of property and access to natural resources do not discriminate against women (see for instance methodology for measuring SDG 5.a.2). In addition, it would be highly relevant to mention “temporary special measures” as contained in CEDAW. These could be additional subparagraphs to Paragraph 2 of Article 16.
2. As mentioned above, FAO welcomes a separate article on **Indigenous and Tribal Peoples** in Article 17. We offer the following considerations:

a. To comply with standards recognized in the UNDRIP, paragraph 1 should have at the end the following premise: “in accordance with their own needs and interests”.

b. In compliance with the UNDRIP (art 32), the obligation to obtain Indigenous Peoples’ free, prior and informed (FPIC) consent shall be applied prior to the approval of any project, programme or policy and adoption and implementation of legislative or administrative measures affecting Indigenous Peoples.

“States Parties shall consult and cooperate in good faith and according to human rights principles and law with the indigenous and tribal peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”.

c. Finally, with regard to terminology (Indigenous and Tribal), we recommend consultations with the UN Permanent Forum on Indigenous Issues.

1. In Article 20 we suggest to specify that data should be disaggregated.

Article 20, insert new sub-para a in front of the others: “Statistics and research data should disaggregated by gender, age and other social factors”.

1. In terms of implementation mechanism, the draft Convention leaves it for the Conference of State Parties to establish such a mechanism (article 24-26). First, it would make the work of the CoP easier if there was a secretariat that prepares and organizes its work. Second, the draft sets out the nature of the implementation mechanism under article 26, leaving one wondering why it does not already establish an expert body.