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

**South Centre[[1]](#footnote-1)**

**19 August 2021**

**Introduction**

Following the request of the Human Rights Council under UNHRC Res 39/9, the Chair of the Intergovernmental Working Group on the Right to Development submitted a [draft convention on the right to development](https://undocs.org/A/HRC/WG.2/21/2), including [commentaries](https://undocs.org/A/HRC/WG.2/21/2/Add.1), to the [21st session of the Working Group](https://www.ohchr.org/EN/Issues/Development/Pages/21stSession.aspx). The OHCHR also invited all United Nations Member and Observer States, specialized agencies and other intergovernmental organizations with observer status, national human rights institutions with "A status" and NGOs with ECOSOC consultative status to submit comments and textual suggestions on the draft convention.

In line with such invitation, the South Centre is keen to submit the following comments and suggestions to the Draft Convention on the Right to Development (draft Convention). Without prejudice to further comments that may be submitted in the future, the following commentaries refer in particular to the States’ duty to cooperate for ensuring development and eliminating obstacles to development without “leading to unprecedented pressures on the planet”[[2]](#footnote-2) while strengthening human rights as the bedrock for fighting poverty and building a greener, fairer, and more resilient societies for all.

1. **Article 1.- Object and purpose**

Article 1 of the Draft Convention establishes its object and purpose in line with the Declaration on the Right to Development and states that it seeks to “guarantee its effective operationalization and full implementation at the national and international levels.” For the achievement of such objective, it is necessary to consider that implementation of international law is dependent upon domestic mechanisms that vary according to the peculiarities of the legal system of each State, and it may require not only normative changes, but also changes in the economic, social, cultural, fiscal, political and governance structures of States.[[3]](#footnote-3)

International treaties establish rules of conduct among its Parties, which generally allow certain flexibility for them to adopt the most adequate measures in accordance with their legal systems, to comply with the obligations included in the treaties. Given the nature of the right to development, as a right by itself and as a means for the full enjoyment of all other human rights, the notion of “guarantee” may raise concerns about the scope and extent of the obligations regarding the operationalization of the draft Convention, as the right to development can only be progressively realized through an incremental process supported by increased international cooperation. [[4]](#footnote-4)

Therefore, it will be beneficial to clarify Article 1 as follows:

**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~~ through its effective operationalization and full implementation at the national and international levels.

1. **Article 3.- General Principles**

Article 3 of the draft Convention refers to the General Principles applicable for its implementation. In its commentaries, it is recognised that none of the core human rights treaties incorporate a section on applicable principles, except the Convention on the rights of People with Disabilities. The inclusion of general principles in the draft Convention is based on the objective of guiding “duty bearers for achieving the convention’s purpose or objective and for implementing the provisions.”[[5]](#footnote-5)

The inclusion of general principles in the draft Convention could streamline its implementation and operationalization at the domestic and international levels. However, a prescriptive approach should be avoided in order to provide sufficient policy and regulatory space for States parties to put in place the measures necessary to achieve the Convention’s objectives. In this regard, it will be essential to refer back to the UN Declaration on the Right to Development, which recognises in its article 3.2 that the right to development requires “full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.”

Similarly, this section should refer to the internationally recognised human rights principles as an umbrella provision for the implementation of the draft Convention, including the principles of equality, non-discrimination, participation, transparency and accountability as well as international cooperation and solidarity. The principle of special and differential treatment for developing and least developed countries, should also be included.

Therefore, the following could be considered as an umbrella provision:

**Article 3.- General Principles. -** To achieve the object and purpose of the present Convention and to implement its provisions, the Parties shall fully respect the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, and shall by guided, inter alia, by the following principles:

1. **Article 13.- Duty to Cooperate**

The duty to cooperate is established in Articles 55 and 56 of the United Nations Charter, and in Article 3.3 of the Declaration on the Right to Development, which recognises that “States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development.” The duty to cooperate may manifest itself in multiple areas and under a large variety of modalities, and it should be streamlined in the implementation of the draft Convention.

The interrelation of the duty to cooperate with other provisions included in the draft would require its application throughout the text of the draft. For example, Article 14 refers to the use of coercive measures requiring States to “refrain from adopting, maintaining or implementing” these measures, and recognises them as violations to the right to development. Nonetheless, it would be important to stress that coercive measures are a blunt denial of international cooperation, which can severely affect the capacity of States to fulfil the objectives set out in the draft Convention.

Similarly, Article 6 on the relationship with other human rights could consider how international cooperation could support the effective realization of other human rights, including the rights of peasants and indigenous peoples. International cooperation should play a fundamental role in supporting the implementation of these rights by creating an enabling environment for cooperation and dialogue to improve human conditions under a broader understanding of the promotion, protection, and fulfilment of all human rights, including the right to development.

Article 20 of the draft Convention requires the implementation of several standards and duties for the collection, management and analysis of statistics and data, which could represent a challenge for developing and least developed countries, not only given the extent and burden or such requirements, but also because of the limited capacities to respond to such obligations. Therefore, the inclusion of international cooperation on sharing expertise, methodologies and knowledge on this matter becomes crucial.

Finally, the international community has widely recognized that mitigation and adaptation to address the effects of climate change require an “enhanced action in an effective and appropriate international response in accordance with their common but differentiated responsibilities and respective capabilities.”[[6]](#footnote-6) International cooperation based on fundamental human rights principles must serve as an important means to achieve the final objective of reducing global greenhouse emissions while respecting the fundamental rights of the people as well as addressing adverse impacts of climate change and achieving the implementation of the right to development. To this end, Article 13.2 of the draft Convention should not only recognise concrete and targeted steps for the fulfilment of the objective of the draft Convention, but should also consider that the creation of international conditions towards the fulfilment of the right to development requires articulated actions , including international assistance, access to technologies and economic and technical cooperation, for a comprehensive and coordinated response to climate change as well as to other crises.

While enhancing international cooperation, States should clearly abide by the principles of transparency and inclusiveness, engage in collaboration at all levels of public decision-making, and pay particular attention to the participation of grassroot and vulnerable groups. South-South cooperation among developing countries can play a key role in this regard, through the exchange of relevant experiences, good practices and the provision of innovative solutions for tackling the unique challenges faced by developing and least developed countries.

Therefore, the following could be considered:

**Article 13.2.- :** To this end, States Parties recognize their primary responsibility for the creation of international conditions favourable to the realization of the right to development for all, and for ~~undertake~~ taking steps to this end ~~deliberate, concrete and targeted steps, separately and jointly, including through cooperation within international organizations~~ individually and through international assistance and co-operation, especially economic and technical, in partnership, as appropriate, with civil society:

1. The South Centre is an intergovernmental policy research think-tank composed of and accountable to developing country Member States. It conducts policy-oriented research on key policy development issues and supports developing countries to effectively participate in international negotiating processes that are relevant to the achievement of SDGs. The South Centre promotes the unity of the South in such methods while recognizing the diversity of national interests and priorities. [↑](#footnote-ref-1)
2. United Nations Development Program, *Human Development Report 2020: The Next Frontier Human Development and the Anthropocene* (United Nations, 2020) in <http://hdr.undp.org/sites/default/files/hdr2020.pdf> (Accessed 11 January 2021). [↑](#footnote-ref-2)
3. See: Yuefen Li, Daniel Uribe and Danish, **Challenges and Opportunities for Implementing the Declaration of the Right to Development, Policy Brief 74, South Centre (April 2020) in** <https://www.southcentre.int/policy-brief-74-april-2020/> **(accessed 18.08.2021).** [↑](#footnote-ref-3)
4. Ibid, p. 1. [↑](#footnote-ref-4)
5. Commentary to Article 2 of the Draft Convention on the Right to Development, UN Doc. A/HRC/WG.2/21/2/Add.1 (2021) p. 23. [↑](#footnote-ref-5)
6. Conference of the Parties, Report of the Conference of the Parties on its Twentieth Session, UN Doc. FCCC/CP/2014/10/Add.1 (2015), p. 6. [↑](#footnote-ref-6)