Comments and textual suggestions of International-Lawyers.Org on the Draft Convention on the Right to Development

(20 August 2021)

[The below comments are based on the text found in UN Doc. A/HRC/WG.2/21/2/Add.1 of 20 January 2020.]

International-Lawyers.Org welcomes and strongly supports the drafting and eventual adoption of a Convention on the Right to Development. The draft text and comments prepared for the Intergovernmental Working Group on the Right to Development form a very good starting point for this treaty and we express our sincere appreciation for the excellent work of Mihir Kanade who provided this text of the draft treaty on behalf of the Drafting Committee.

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We reiterate the necessity of recognizing both a human right to development for all individuals and groups as well as the duty of all States to cooperate to achieve equal and equitable development among States. The goal of cooperation, instead of competition, to achieve equal and equitable development should be reflected in a human rights treaty on the right to development.

The express inclusion of obligations of capacity-building and the provision of finance and other resources in and among States, would enhance the achievement of the treaty's object and purpose.

Moreover, as a legal instrument, a treaty on the right to development should include more adequate provisions for its implementation so as to ensure respect for the right to development for individuals and groups.

Specifically, we make the following comments and suggestions concerning specific provisions of the text.

Article 6

This article reflects the international consensus that has achieved recognition by the overwhelming number of States.

Article 7

While this article reflects an expansion of the understanding of the entities bound by international law, it is consistent with the growing understanding that international law may create legal obligations for non-State entities as well as States and Inter-governmental organizations.

This article also promotes the achievement of the object and purpose of this treaty as stated in article 1.

Article 14

This article is consistent with the findings and recommendations of the Special Rapporteur on unilateral measures.

Article 16

While we welcome the commitment to gender equality reflected in this article, the article should expressly state that States have a duty, and not merely a right, to take action to affirmatively address historical inequalities based on gender.

Article 24

While this article provides for participation by non-governmental organizations, this participation should be guaranteed through more specific provisions in the treaty. Moreover, provision should be made in the treaty to ensure that the participation of non-state actors is geographical equitable.

Consideration should also be given to the creation of a system for grants to non-government organizations for their participation in the work of the conference of the parties and the implementation mechanism for this treaty.

Article 26

While we welcome the reference to an implementation mechanism in article 26, we believe that such a mechanism should be established in the treaty and not left to be established subsequent to the entry into force of the treaty as this article appears to do. Moreover, such a mechanism could be modeled on the committees currently found in the major United Nations human rights treaties.

Article 33

Although we recognize that it matter that is currently left to the discretion of States as reflected in this article, we recommend making compulsory the reference to the International Court of Justice, disputes between States that are not resolved within a reasonable period of time.

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We thank the Intergovernmental Working Group on the Right to Development for this opportunity to provide these comments and for their very important work on this treaty on the right to development.