

NGO submission on the draft Convention on

the Right to Development

Office of the United Nations High Commissioner

for Human Rights

This contribution is submitted by Alliance VITA in response to the call for comments and textual suggestions from the civil society on the draft convention on the Right to Development

**August, 2021**



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| **ABOUT US** **WHO WE ARE**  **Alliance VITA** was founded in 1993 in France at the time of the introduction of the first bioethical laws. The organization develops its action at the international level providing trainings on bioethical issues and engaging with international institutions (European Union, Council of Europe, United Nations…).  Alliance VITA held special Consultative Status before the United Nations Economic and Social Council (ECOSOC). Its president is François Xavier Pérès. The organization is funded exclusively by private donations.  **WHAT WE DO**  Alliance VITA operates and is based on **two major purposes**: aid for persons facing life’s challenges and hardships; raising policymakers and public awareness on the protection of human life.   * **Counseling and support services** (through Internet, telephone, face to face meetings): * **“SOS Bébé” for maternity issues** (difficult or unplanned pregnancy, pre- or post-natal mourning, disability, miscarriage, voluntary and/or medical interruption of pregnancy, infertility): [www.sosbebe.org](https://www.sosbebe.org/) * **“SOS Fin de vie” for serious illness or death issues** (risk of unreasonable therapeutic obstinacy, euthanasia, burn-out of loved ones or caretakers, mourning, suicide): [www.sosfindevie.org](https://www.sosfindevie.org/) * **Alerting and raising awareness**. Alliance VITA: * raises awareness among policymakers and the general public using national and international information campaigns, on the issues of protection of human life, respect for human dignity and protection of children. * engages in national and international dialogue and discussion on contemporary bioethical issues. |

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# OVERVIEW

Following the United Nations General Assembly resolution [A/HRC/RES/39/9](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/296/49/PDF/G1829649.pdf?OpenElement), the Human Rights Council (hereafter “**the HRC**”) requested the Intergovernmental Working Group on the Right to Development to submit a draft convention on the right to development.

A draft convention, including commentaries, has been submitted by the Chair of the Intergovernmental Working Group to the 21st session of the Working Group.

With the view to facilitating negotiations of the draft convention, the Office of the United Nations High Commissioner for Human Rights (hereafter “**the OHCHR**”) invited the United Nations Members 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 this context, Alliance VITA, as a NGO with ECOSOC consultative status, presents the following submission.

It contains comments and textual suggestions on some articles of the draft convention, aiming to highlight critical issues and challenges related to it.

# COMMENTS AND TEXTUAL SUGGESTIONS

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| Article 4 – The right to development (Part II of the draft convention) |

*1. Every human person and all peoples have the inalienable right to development by virtue of which they are entitled to participate in, contribute to and enjoy economic, social, cultural, civil and political development that is consistent with and based on all other human rights and fundamental freedoms.*

*2. Every human person and all peoples have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.*

### The elderly and the right to development

By virtue of the inalienable right to development, every human person is entitled to participate in and enjoy economic, social, cultural, civil and political development.

Yet, nowadays, a specific group of people faces difficulties to enjoy and fully access certain aspects of this right. The elderly may specifically struggle in enjoying and participating in development. They usually find themselves deprived of the necessary abilities to access basic services. New technologies are increasingly developing. These, such as Internet or web apps, become the only way to access basic administrative services, such as bank transfer, new identity papers, government taxes, etc.

Throughout societies’ demographic evolution and ageing of the population, a major challenge rises. In particular, the number of elderly people requiring special social and medical support increases. To face this challenge, intergenerational solidarity shall be implemented, as support of the most fragile group of people, notably by developing the links between the elderly and the generations following them.

The Covid crisis has highlighted specific challenges such as social and emotional isolation and a need of support in adapting with the digital era rising. As technology keeps developing, along with an increasing number of the ageing of people, those challenges will persist. Facing such an issue, several concrete policies of intergenerational solidarity shall be implemented by Member States.

Social partnership and platforms of training, help and support in favor of the elderly shall be encouraged, so that the latter will be able to meet their daily basic needs.

Recalling the idea that the right to development is realized, not only on ‘what’ is achieved, but also on ‘how’ it is achieved, Member States shall be encouraged to develop and implement concrete tools to help and support the elderly. So that no one will be “left behind” in the enjoyment of this right.

In this sense, all the provisions of the draft convention should be made conditional on respect for the fundamental ethical principle that technologies must be at the service of all human beings and society.

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| **Textual suggestions**  *(in bold characters)*  Considering the above, paragraph 2 of Article 4 should be completed as follows:  “*Every human person and all peoples have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.* ***As to ensure such right, they shall be provided with necessary assistance and help to fully benefit from it.****”* |

### Discrimination in development of artificial intelligence

Alliance VITA wishes to stress the importance of several key principles relating to the respect of fundamental rights, that should be considered in the draft convention. This relates particularly to human dignity and health care.

The rise of artificial intelligence is creating many new challenges in this respect. For example, the development of medical robots reexamines the decision-making criteria and the place of the physician in the field of medical care and treatment. The overvaluation of artificial intelligence would lead to reduce human intelligence to its rational facet to the detriment of the bodily, relational, and spiritual intelligences that are essential to humanity.

As stated in the Preamble of the draft convention, “*the right to development, as incorporated in draft article 4, is human and people-centred, in that, it entails their right to participate in, contribute to, and enjoy development.”* As a human and people-centred right, the right to development focuses on guaranteeing the respect and well-being of every human person. The enjoyment of this right should be “*consistent with and based on all other human rights and fundamental freedoms*”, which includes human dignity. As stated in the United Nations Universal Declaration of Human Rights, “*all human beings are born free and equal in dignity and rights*” (Article 1).

The right to development must be exercised with respect for the human being. The concept of development should never overpass nor ignore that.

Attention to the accessibility of artificial intelligence systems is important but can lead to difficulties. People with disabilities should have access to it but could be prohibited when artificial intelligence systems are used to exploit people's vulnerabilities. The predictive potential of technology can seriously hamper a person's economic and social life if the likelihood of an illness prevents them from taking out an insurance policy or obtaining a bank loan, for example.

The right to development must necessarily be subject to boundaries that serve the rights and freedoms of individuals.

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| **Textual suggestions**  Bearing in mind that the right to development is a human-centred right, which shall be implemented without distinction of any kind as all human beings are born free and equal in dignity and rights, paragraph 1 of Article 4 should be completed as follows:  *“Every human person and all peoples have the inalienable right to development by virtue of which they are entitled to participate in, contribute to and enjoy economic, social, cultural, civil and political development that is consistent with and based on all other human rights and fundamental freedoms.* ***This right shall always be implemented through the prism and within the limits of respect for the human being.****”* |

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| Article 16 – Gender equality (Part III of the draft convention) |

*1. States Parties, in accordance with their obligations under international law, shall ensure full gender equality for all women and men, and undertake to take measures, including through temporary special measures as and when appropriate, to end all forms of discrimination against all women and girls everywhere so as to ensure their full and equal enjoyment of the right to development.*

*2. To that end, States Parties undertake to take appropriate measures, separately and jointly, inter alia:*

*a. To eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres;*

*b. To ensure women’s full and effective participation and equal opportunities for leadership at all levels in the conceptualization, decision-making, implementation, monitoring and evaluation of policies and programmes in political, economic and public life, and within legal persons;*

*c. To adopt and strengthen policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels;*

*d. To mainstream gender perspectives in the formulation, adoption and implementation of all national laws, policies and practices and international legal instruments, policies and practices;*

*e. To ensure equal and equitable access to resources necessary for the full realization of the right to development by women and girls everywhere.*

### Protection of girls and women’s fundamental rights and integrity

According to Article 16, States Parties undertake to take appropriate measures, notably to eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres. Such measures aim to end all forms of discrimination against all women and girls everywhere so as to ensure their full and equal enjoyment of the right to development.

As indicated in the commentary under the draft convention, Sustainable Development Goal (hereafter “SDG”) 5.2 of the 2030 Agenda aims to “*eliminate all forms of violence against all women and girls in the public and private spheres,* ***including trafficking and sexual and other types of exploitation***”.

Yet, Alliance VITA would like to highlight specific issues, threatening the rights of women and girls on an international scale, in respect of their right not to be exploited or being merchandised.

In that regard, it is important to pay particular attention to the serious dangers that the practice of surrogate motherhood (surrogacy) entails in terms of women’s rights and the best interests of the child. The right to development should be applied in the sense of promoting the integrity and sanctity of human body, as much for men and women.

Imposing a systematic recognition of surrogate parenthood by the UN vis-à-vis a Member State, regardless of whether this parenthood was initially recognized in another Member State or in a third country, would lead to *de facto* encouragement. This would also imply legal acceptance of surrogate motherhood, despite the serious infringements of fundamental rights involved in this practice.

Neither the principle of non-discrimination nor the right to respect for private life imply that every State Party is obliged to recognize parentage resulting from surrogate motherhood. On the contrary, the importance of the fight against trafficking in human beings requires that the priority competence of Member States to recognize parentage be respected, so that they can continue to be able to effectively combat trafficking in human beings that fraudulently relies on the parentage law of Member States.

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| **Textual suggestions**  In the spirit of SDG 5.2, paragraph 2 a. of Article 16 should be stated as follows:  *“a. To eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres****, including trafficking and sexual and other types of exploitation******such as prostitution, surrogacy and slavery****;”* |

### Equality between men and women

As mentioned in the commentary under the draft convention, the Committee has chosen not to include the terms “equality between men and women”, although it is employed on multiple occasions in CEDAW (as explained in the commentary). The Committee has rather employed the term “gender equality”, defining it “as synonymous”. As recalled, CEDAW willingly mentioned the term “equality between men and women” which is compared also with the term “gender equality”.

Yet, it should be more comprehensive and consistent with the spirit of CEDAW to employ both terms. With respect to CEDAW, Article 16 of the draft convention should mention in the same way “equality between men and women” beside “gender equality”. Therefore, Article 16 title should be completed with the term “equality between men and women”, so that the very content and substance of this Article will be embodied.

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| **Textual suggestions**  In the same spirit of CEDAW and considering the risk of confusion regarding the content of Article 16, the title should be more specific. As a title tends to give a general and clear idea of what follows, the term “gender equality” should be removed and only be used in the very content of the Article. Therefore, Article 16 should be entitled as follows:  **“Article 16 – Equality between men and women”** |