**OBSERVATIONS AND RECOMMENDATIONS**

**“DRAFT CONVENTION ON THE RIGHT TO DEVELOPMENT”**

From: Office of the Special Envoy Special Envoy of the UNSG on Disability and Accessibility.

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**Preamble**

* It is suggested that the name of the instrument be “International Covenant on the Right to Development”, to show consistency with provisions already negotiated and adopted by the UN Member States such as the “International Covenant on Civil and Political Rights” and “International Covenant on Economic, Social and Cultural Rights”. This name also would support the relationship of the “right to development” with other civil, political, economic, social and cultural rights and fundamental freedoms as enshrined in both Covenants.
* It is suggested to include “health emergencies”, “pandemics” and other “health crises” as obstacles to the right to development and other related human rights.
* It is suggested that the preamble states that “realization of the right to development constitutes both the primary end and the principal means of sustainable development” and “social sustainability” and “inclusion” of persons, particularly those persons, communities and peoples in situation of vulnerability.
* It is suggested that in the section that refers to the Universal Declaration of Human Rights, specific mentioned be made of Article 25 since it includes key rights and elements on human development: food, clothing, housing, medical care, necessary social services and the right to security.
* It is suggested to cite among the regional instruments the “American Convention on Human Rights”, the “Additional Protocol to the American Convention on Economic, Social and Cultural Rights”, the American Declaration of the Rights and Duties of Man” and the “Interamerican Democratic Charter” since all these documents refer to human rights in the context of development.

**Part I**

**Article 2 – Definitions**

* It is suggested to include a definition accepted by the international community and UN specialized agencies (e.g. the World Bank and UNDP) on “development”, “sustainable development” and “social sustainability”. These terms are core elements of the “right to development” and it would be important to define before explaining what “the right to development” is.

**Article 3 – General principles**

* It is suggested to include the right of State Parties not only “to regulate” but to “enact legislation or other related measures”.

* It is suggested that the principles refer to “rights and responsibilities of individuals, groups, and organs of society to promote and protect human rights, including the private sector”. This clarification is extremely important with regard to the “right to development” in the context of barriers to intellectual property related to essential goods such as vaccines and medical technologies, energy, access to water and climate change. Development will not be possible without the cooperation of the private sector, in line with UN resolutions and principles on human rights obligations and responsibilities of the private sector (e.g. UN Global Compact Principles).
* In Article 3, paragraph b) it is recommended to include “universal inclusion and accessibility”

**Part III**

**Article 8 – General Obligations of State Parties**

* Following language of UN Human Rights Council Resolutions, it is suggested that draft article 8 also incudes, “sexual orientation” and “gender identity” (e.g. Resolution A/HRC/RES/32/2 adopted by the Human Rights Council in 2016 and General Assembly resolution A/RES/69/182 on “Extrajudicial, summary or arbitrary executions” of 2014).
* Article 8, N. 2: It is suggested to replace the verb “shall ensure” since it is not strong enough. It is suggested to state, for example, “States Parties shall guarantee that public authorities and institutions at all levels act implementing the present Convention, in all pertinent areas”

**Article 12 – Obligation to fulfil**

* It is suggested that draft Article 12 includes also “national plans” and “national strategies”. It is also recommended that impairments include “intellectual property and licences” which are fundamental in the context of emergencies, pandemics and other health crises and particularly on production and distribution of health technologies and scientific progress such as research, vaccines, medical treatments and other health, biodiversity, environment, climate and land technologies essential for human development and survival.
* Article 12, paragraph 2: It is suggested to include “…laws, policies, **strategies and other measures**…”
* It is suggested that Part III of the draft Convention be consistent with previous sections and draft articles and always refers to national “policies”, “plans”, “laws”, “regulations”, “programs”, “strategies” and “practices”. All and/or some of these national instruments and mechanisms will be key to promote and protect the “right to development” at country level.

**Article 13 – Duty to cooperate**

* Article 13 in paragraph 1, it is suggested to include social security – social protection.
* Article 13 in paragraph 3, it is suggested to include after “bilateral”: regional and multilateral…”

**Article 14 – Coercive measures**

* In order to be consistent with the development-related rights protected by the International Covenants, it is suggested that draft article 14 refers to other coercive measures such as “civil, cultural and social measures” in addition to “political” and “economic” measures.

**Article 15 – Special or remedial measures**

* Article 15: When is referring to “special or remedial measures”, technically is referring to measures on “affirmative actions” which legally is the correct term and the one that has been used by the UN treaty bodies during the last decade.

**Article 20 – Statistics and data collection**

* Draft Article 20 on “Statistics and data collection” should refer specifically to certain vulnerable groups that are still “invisible” in domestic information systems intrinsically linked to human development (e.g., indigenous peoples, afro-descendant populations, older persons, persons with disabilities, women/girls, persons living with HIV and other communicable diseases, LGBTQ+, refugees, displaced persons, children, etc.). It is suggested to review the SDG Declaration and make this article consistent with all persons and groups mentioned by the SDGs. This article should include a reference to the technical cooperation of UN and specialized agencies since those institutions work at domestic and international level to collect data and information.

**Article 22 – Sustainable development**

* It is suggested to include SDG 4.7 in article 22 or formulate a separate article that refers to SDG 4.7

*By 2030 ensure all learners acquire knowledge and skills needed to promote sustainable development, including among others through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship, and appreciation of cultural diversity and of culture’s contribution to sustainable development.*

**Article 23 – Harmonious interpretation**

* Article 23, it is suggested to add a No 3: “The provisions of the present Convention shall not be interpreted in any case as impairing the human rights and obligations of State Parties enshrined in human rights treaties of the United Nations system”.

**Part IV**

**Article 24 – Conference of States Parties**

* Article 24 No 8, with regard to the transmission of the reports of the Conference of State Parties, it is suggested to include the “Meeting of the Chairpersons of the UN Human Rights Treaty Bodies” which is an important and formal occasion, that incidents on the area of human rights, and in addition, is the direct channel to reach the human rights treaty bodies.

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

* Article 26 No 2: Following-up resolution 68/268 of the UN General Assembly on strengthening the treaty bodies, it is suggested to add in No 2 “…balanced gender representation and the participation of experts with disabilities”