

1. The Committee on the Rights of the Child (Committee) welcomes this opportunity to submit comments on the draft convention on the right to development. The Committee notes that limited progress has been made in clarifying the contents of the right to development since the adoption of the Declaration on the Right to Development 35 years ago. This draft convention offers an opportunity to address some of the conceptual and implementation challenges pertaining to the right to development.
2. The Committee has repeatedly acknowledged the inextricable linkage between inclusive, equitable and sustainable development and the realisation of the rights of the child.¹ In addition to being a right that applies to children, the right to development, and the draft convention as a whole, are highly relevant to the realisation of children’s rights under the Convention on the Rights of the Child (CRC) and its two Optional Protocols. From this perspective, the Committee presents (preliminary) comments with the aim of advancing the protection accorded by the draft convention to the rights of the child.
3. Article 4(1) of the draft convention makes clear that ‘every human person and all peoples’ have the right to development, which is “the inalienable right by virtue of which every human person and all peoples 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”. As phrased, Article 4(1) clearly applies to children as human persons and as members of peoples. Indeed, there is nothing in the draft convention that pertains to ‘human persons’ that cannot be understood as applying to children. The Committee also notes that there are some textual elements that relate directly to children, such as the prohibition on discrimination based on age in Article 8, which the commentary indicates as being of particular relevance to children². The Committee also noted the reference to future generations in Article 22 and welcomes the inclusion of age as a basis for certain human persons, groups and peoples requiring special or remedial measures in Article 15, in relation to which the commentary explicitly refers to children.³
4. However, given the crucial importance of the right to development and development to children – both during childhood and in their future adulthood – it is disappointing that there is no explicit reference to children as a particular group within the draft convention as it stands. This contrasts with the group-specific approach taken in the articles addressing the group-specific concerns of women (Article 16) and indigenous and tribal persons (Article 17).
5. Furthermore, given the potential complexities in the definition of, and relationship between, children and future generations, an increased focus on “future generations” in the draft convention in the absence of specific recognition of the rights of the child will not be sufficient to remedy the current near invisibility of children within the draft convention.

¹ Committee on the Rights of the Child, Contribution to the 2030 Agenda for Sustainable Development in response to a call for inputs by the High-Level Political Forum on Sustainable Development (HLPF) (15 March 2019).

² Draft Convention on the Right to Development, with commentaries, UN Doc. A/HRC/WG.2/21/2/Add.1, p.60, Art. 8, para. 6, notes. 221 and 222.

³ Ibid., Art. 15, para. 1.

6. The right to development of each child as provided for in Article 6 of the CRC is widely recognised by global, regional and national development instruments as a rights-based development imperative, which should begin at the earliest moment in the child's life. There is social science evidence of the dividends derived from early childhood development and of the strong connection between the development of each individual child and the development of each nation. The draft Convention thus creates an opportunity to express this important link.

7. It is crucial that as the draft convention moves forward more extensive attention is focused on the position of children. Article 4(1) speaks about the right to development entailing an entitlement to 'participate in, contribute to and enjoy economic, social, cultural, civil and political development'. However, children face particular challenges with regard to participation in, and contribution to development. Some of these result from the innate biophysical characteristics of children (for instance, very young children) but others are socially constructed and rooted in stereotypes and flawed assumptions about children, their capacities and their real and potential role as key social actors. In a development context, there has been a historic tendency to regard children as passive objects of development.

8. This lack of recognition of the child right to participate is reflected in the failure to include girls in Article 16(2)(b), which provides States Parties' obligations to ensure women's full and effective participation and equal opportunities for leadership at all levels in political, economic and public life. This is despite the fact that girls are included in Article 16(1), (2)(a) (c) and (e). As such, the proposed provision is not consistent with the right of children to take part in the conduct of public affairs under the International Covenant on Civil and Political Rights and the child's participation rights under the CRC (which include participation and leadership in development and other contexts).⁴ The proposed obligations with regard to "empowerment" outlined in Article 16(2)(c) do not compensate for this gap.

9. Article 4(2) states that "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 commentary to draft Article 8 recognises that the CRC includes numerous rights of the child in connection with their age, including the right of the child to participate in matters and decisions affecting them.⁵ It is crucial that careful thought be given to how the draft convention can be shaped to serve as an effective basis for children being able to enjoy the rights set out in Article 4(2) of the draft Convention as well as their existing participation rights under international law.

10. A significant number of issues that have implications for children in the context of the right to development – such as environment including climate change, migration, digital media, globalization, international cooperation- have extraterritorial dimensions. As a result, it is strongly advised that the draft convention adequately address issues of extraterritorial jurisdiction in providing for the nature of states parties obligations.

⁴ See, e.g., Article 12 CRC.

⁵ Supra note 2, para. 6.

11. Without adequate attention being accorded to children in the draft convention – whether in terms of a child-specific rights provision and/or through more systematic mainstreaming of children and their rights throughout discrete articles – children risk being side-lined in relation to the draft convention and development informed by that treaty. A failure to ensure recognition of the particular position of children vis-à-vis the issues addressed by the draft convention also threatens to undermine a number of the general principles set out in the draft convention, including the principle that human persons should be “active participants” of the right to development (Article 3(a)) and that the right to development should be realized in a manner that integrates the principles of accountability, empowerment, participation, non-discrimination, equality and equity (Article 3(b)). It is thus important that the rights of the child be accorded adequate attention within the draft convention not only from the perspective of children but in terms of the fundamental elements of that document as it stands.

12. The Committee would be delighted to enter into a dialogue about integrating a child rights perspective in the draft convention with the Intergovernmental Working Group on the Right to Development, the Drafting Group, and other relevant actors. It is also important that children are given the opportunities to provide their views in the drafting process of the convention on the right to development. The Committee hopes and expects that its work on development and the rights of the child would serve as a useful basis for such discussions so as to maximise that the potential of the draft convention from the standpoint of the child rights.
