

General comments

The International Service for Human Rights (ISHR) understands the right to development as the right of individuals and peoples to conditions which contribute to and enable the full realisation of all other civil, political, economic, social and cultural rights.

The right to development is indivisible, interdependent and interrelated with all human rights. Respect for all human rights is a necessary element of the right to development. Measures to promote and realise the right to development must be developed and implemented compatibly with all other human rights. The right to development must not be invoked or used to justify limitations, restrictions, violations or abuses of any other human rights.

The right to development is a right of individuals and peoples, not a right of States. States have the primary duty to respect, protect and fulfil the right to development, both at the national level and through international cooperation.

All people have the right to defend rights, as enshrined in Article 1 of the Declaration on Human Rights Defenders.¹ Human rights defenders play an essential role in promoting and contributing to the realisation of all human rights, including the right to development.² Protection and respect for the right to defend rights, including the right to defend the right to development, is integral to the realisation of all human rights and requires that States respect, protect and promote human rights defenders and guarantee a safe and enabling environment for their work, free from undue interference or restriction.

A violation of the rights of human rights defenders constitutes a violation of the rights they are protecting.³

Textual suggestions

Consistent with these general comments, ISHR makes the following textual suggestions on the second revised text (A/HRC/WG.2/24/2). These suggestions are not exhaustive and ISHR reserves its position on other aspects of the text.

PP4

This preambular paragraph should be amended to also recall the Declaration on Human Rights Defenders.

Article 3(l) – General principles

We welcome recognition in the draft Convention that everyone has the right to promote and to strive for the protection and realisation of the right to development. Specifically, in Article 3(l), the draft Convention recognises the right and responsibility of individuals, groups and organs of society, both individually and in association with others, to promote and protect human rights at the national and international levels.

¹ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8 March 1999.

² A/HRC/RES/31/32, OP 7, 24 March 2016.

³ CESCR, Human rights defenders and economic, social and cultural rights, March 2017, E/C.12.2016/2. See also OHCHR, '20th anniversary of the UN Declaration on Human Rights Defenders', Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders, 30 May 2018.

Article 13(2) – Duty to cooperate

We consider that this article should be amended to specifically reference human rights defenders, providing that States should engage with civil society *and* human rights defenders.

Article 13(4) – Duty to cooperate

We consider that this article should be amended to include an additional provision which recognises the duty of States to cooperate fully with international human rights bodies, processes and mechanisms,⁴ and to prohibit, prevent, investigate and ensure accountability for any acts of intimidation or reprisal against persons cooperating or seeking to cooperate with such bodies, processes and mechanisms.⁵

Article 14 – Coercive measures

We do not support this article and consider it should be deleted. The draft article is incompatible with international human rights law as well as the principle of state sovereignty itself. It is an essential aspect of universal human rights that States remain free to take measures, including economic and political measures, to promote and protect human rights, and to pursue accountability for violations and abuses, at both the national and international levels, and through unilateral, bilateral and multilateral measures.

Articles 8(1) and 15(1)

We consider that these articles should be amended to include explicit reference to a person's status as a 'human rights defender' as a prohibited ground of discrimination (article 8(1)) and to justify specific and remedial measures to accelerate or achieve equality (article 15(1)). We regret the deletion of the term 'human rights defender' from article 15(1) as compared with the first revised text. We note that OHCHR's recently published comprehensive guidance explicitly includes a person's status or opinion as a 'human rights defender' as a ground on which discrimination should be prohibited.⁶

Article 16 – Equality between men and women

We recall and endorse our separate joint submission with the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World), Outright International, The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Person's Rights (RFSL) and COC Nederland on article 16. In particular, we consider that references to 'equality between men and women' should be replaced with references to 'gender equality', consistent with established principles of international human rights law and as was the case in the previous draft. We also consider that, in order to fully transmit the aims of article 16 and tackle the root causes of inequality for women and girls, it is crucial to address the multiple intersections that constitute the realities of all women and girls. The text of the draft Convention should include direct references to intersectionality and grounds of vulnerability such as race, class, ethnicity, sexual orientation, gender identity, disabilities, among others.

⁴ See *Vienna Convention on the Law of Treaties 1969*, Articles 26 and 31(1). See also Human Rights Committee, 'General Comment No 33: Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights' (25 June 2009) UN Doc CCPR/C/GC/33, para 15.

⁵ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8 March 1999, Articles 9(4) and 12(2).

⁶ OHCHR and Equal Rights Trust, 'Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation' (2023).

Article 25 – Conference of States Parties

We do not consider it appropriate that a Conference of States Parties is established to monitor and review the effective implementation of the draft Convention and to make recommendations and elaborate jurisprudence on the right to development. This vital quasi-judicial function should be undertaken by an independent, expert treaty body, as is the case with other international human rights treaties. It is not a function which should be vested in a political body. In light of resource constraints and the importance of harmonisation, comity and efficiency, consideration should be given to vesting this function in the existing Committee on Economic, Social and Cultural Rights (subject, of course, to the Committee being provided with all necessary additional resources), and perhaps even to elaborating this draft Convention as an additional Optional Protocol to the International Covenant on Economic, Social and Cultural Rights rather than as a standalone treaty.

Proposed new article on the relationship of the right to development and the rights of defenders

Finally, as indicated in an ISHR submission on the first revised text, we consider that the draft text should be amended to include an additional article in the following terms:

Article X – Relationship with the rights of human rights defenders

1. States Parties shall adopt and enforce all necessary and appropriate measures to ensure an enabling environment for all people to promote and defend the right to development.
2. A violation of the rights of an individual or group promoting or protecting the right to development constitutes a violation of the right to development.

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