São Paulo, January 16, 2022.

To

**Office of the High Commissioner of Human Rights**

*“Societies will never achieve the SDGs without the full participation of everyone, including people with disabilities. We cannot afford to ignore or marginalize the contributions of 1.5 billion people. Upholding the rights of people with disabilities is a moral imperative. But it is not an act of charity. It is a recognition of rights and a practical necessity, if we are to build healthy, sustainable societies to the benefit of everyone – those with disabilities, and those without. Together, we can remove barriers and raise awareness, so that people with disabilities can play a full part in every sphere of society, around the world.”* *(António Guterres, UN Secretary-General, Remarks to the 11th session of the Conference of State Parties to the Convention on the Rights of Persons with Disabilities, 12 June 2018)[[1]](#footnote-1)*

*Ref.* ***Contributions for the elaboration of the Convention on the Rights to Development***

**Jô Clemente Institute** (“**IJC**”) is a non-profit civil society organization founded in 1961, whose work is focused on the promotion of promotion, development of inclusive education and supported employment for persons with intellectual disabilities. It also dedicates to the inclusion, defense and guarantee of rights of persons with disabilities on the national and international scene. In 2021 **IJC** received consultative status at the United Nations Economic and Social Council (ECOSOC). The organization integrates the Brazilian Coalition for Ending Violence against Children and Adolescents, the Brazilian Coalition for Inclusive Education, and the Brazilian Network for Inclusion of Persons with Disabilities (Rede-IN). It is also a member of Inclusion International. *[[2]](#footnote-2)*

IJC is accredited by the Ministry of Health as a Reference Service in the field of Neonatal Screening and through its Center for Teaching, Research, and Innovation, it generates and disseminates scientific knowledge. Since 2009 when Brazil incorporated the UN Convention on the Rights of Persons with Disabilities (“CRPD”) with constitutional status, **IJC** has been expanding its advocacy work, consolidating its innovative and vanguard vision and fostering the implementation of rights of persons with disabilities domestically and internationally.

The draft of the Convention on the right to development refers twice to the term “disability”. First when it says in article 8 that States Parties will commit to respect, protect, and fulfill the right to development for all, without discrimination of any kind, including based on disability (ableism). Secondly, in article 15, when it says that States Parties recognize that certain persons or groups of persons may require special or corrective measures to accelerate or achieve *de facto* equality in the enjoyment of the right to development, among which, persons with disabilities.

These references are truly relevant since, they crystallize the need to understand development as a right of all persons without discrimination of any kind. However, when it comes to ensuring the right to development to persons with disabilities, their singularities must be considered. Thus, responding to the public consultation carried out **IJC** herein presents contributions to the elaboration of this new human rights treaty, especially considering the rights of persons with disabilities.

Disability and the right to development are interconnected topics with a strict relationship with the fulfillment of human rights. As referred to in the UNDP report on *Disability and Inclusive Development,* referring to the UN General-Secretary Report named *Mainstreaming disability in the implementation of the 2030 Agenda for Sustainable Development* *“disability inclusion is recognized in the 2030 Agenda for Sustainable Development and other development frameworks and as a cross-cutting development issue and a human rights imperative, calling for the recognition of and commitment to the specific needs of persons with disabilities in all fields of development, from disaster risk reduction, and humanitarian action, to financing for development and urban development*.” [[3]](#footnote-3)

In several dimensions challenges faced by persons with disabilities tackles the right to development. 80% of the global population of persons with disabilities live in poverty. Persons living in poverty are more likely to acquire a disability during their lives, in contexts where there are difficulties in eating and accessing health. Diseases that could be prevented can cause disability. Difficulties in accessing formal education and exposure to all sorts of barriers place persons with disabilities in socio-economic disadvantage. As the World Health Organization's World Report on Disability points out:

* *Children with disabilities are less likely to attend school, thus experiencing limited opportunities for human capital formation and facing reduced employment opportunities and decreased productivity in adulthood (65–67).*
* *People with disabilities are more likely to be unemployed and generally earn less even when employed (67–72). Both employment and income outcomes appear to worsen with the severity of the disability (52, 73). It is harder for people with disabilities to benefit from development and escape from poverty (74) due to discrimination in employment, limited access to transport, and lack of access to resources to promote self-employment and livelihood activities (71).*
* *People with disabilities may have extra costs resulting from disability – such as costs associated with medical care or assistive devices, or the need for personal support and assistance – and thus often require more resources to achieve the same outcomes as non-disabled people. This is what Amartya Sen has called “conversion handicap” (75). Because of higher costs, people with disabilities and their households are likely to be poorer than non-disabled people with similar incomes (75–77).*
* *Households with a disabled member are more likely to experience material hardship – including food insecurity, poor housing, lack of access to safe water and sanitation, and inadequate access to health care (29, 72, 78–81) [[4]](#footnote-4)*

Given the intrinsic relationship between disability and poverty, and the fact that persons with disabilities are commonly disregarded in debates involving development issues the *“****UNDP’s Strategic Plan - 2018*** *identifies people with disabilities as a critical target group of its multi-sectoral integrated poverty eradication efforts, and the inclusion of civil society representing people with disabilities as crucial in country efforts to implement the 2030 Agenda”.[[5]](#footnote-5)*

Therefore, tackling development issues, and creating a specific human rights treaty devote to the rights to development requires to consider the singularities involving persons with disabilities.

Development is a process of improvement, that permeates economic, social, cultural, and political relations, that intends among other goals the well-being of all people – understood as what allows people to enjoy a peaceful and quality life. Notwithstanding the subjectivity of the term “well-being”, social well-being connects to socioeconomic factors. It demands access to decent jobs, financial conditions to support human needs, access to housing, health and education, sports, culture, leisure and more. The right to development is of an instrumental nature.

What must be noticed is that for persons with disabilities, development is only possible in a truly inclusive and accessible society. To be agents of their own lives and enjoy the process of expanding individual freedoms persons with disabilities depend on available means and support to enjoy the same social, political, and economic opportunities – tools for fulfilling their potentialities on an equal basis with other citizens – and thus, the right to development.

As disability is an evolving concept according to the CRPD, resulting from the interaction of persons with disabilities with barriers preventing their full and effective participation in society on equal basis, the connection and interdependence of development, disability, and accessibility are evident. [[6]](#footnote-6)

Accessibility is a pre-requisite for rights enshrined in the CRPD and in other human rights treaties to be fulfilled. It is a condition that must be ensured for persons with disabilities to enjoy a plain life, having the opportunity to access physical, social, economic, and cultural environments, health, education, information, access to justice and other entitlements. Like the right to development, accessibility is a right itself and a guarantee of rights. It enables persons with disabilities to exercise their human potential and to expand their fundamental freedoms. That is why the CRPD has adopted accessibility as a right, as a guarantee and as a guiding principle. Thus, there is no right to development to persons with disabilities without the guarantee of plain accessibility in every sphere of their lives. [[7]](#footnote-7)

Thus, to ensure that the new Convention tackles the rights to development considering the rights of persons with disabilities, IJC has the following suggestions.

* The CRPD recognizes the *“valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty”.* Thus,throughout the entire process of drafting the treaty persons with disabilities, their families and organizations must be listened to and invited to participate (in view of the provisions of art. 4 of the CRPD, and General Comment n. 7, of the CRPD Committee)
* Accessibility should be included as a guiding principle (art. 3) of the right to development, as a right itself and as a guarantee to the exercise of the right to development.
* A specific article on persons with disabilities should be included in the treaty, inspired by the text of articles 16 and 17, referring to gender equality and indigenous and tribal groups. Such article should recognize persons with disabilities as essential for the development of the society they integrate.
* The Convention should recognize that disability is part of human diversity, a human condition of a transversal nature that is differently experienced by each person. Disability is not- and homogenous condition.
* When other social markers are considered, such as but not limited to ethnicity, sex, gender, sexual orientation, gender identity and social class, they intervene in how persons with disabilities experience their right to development. Therefore, barriers and limitations concerning the multi-layered vulnerability they may experience, and intersectional discrimination should be addressed in the design of public policies for implementing the right to development, including the possibility of implementing affirmative actions, as it was provided in article 16, about gender equality.
* When addressing the relationship between the right to development and self-determination, the treaty could also address self-determination of individuals, connecting it with the right to every person, including persons with disabilities, to be agent of their lives, and thus to exercise legal capacity as guaranteed by art. 12 of the CRPD.
* The treaty should referred to the expression disability based-discrimination in article 5. Ex.: *Art. 5. “(…) as those resulting from apartheid, all forms of racism and racial discrimination,* ***disability-based discrimination****, colonialism, foreign domination and occupation, (…).”*
* Finally, article 4 should encompasses the wording *“on equal conditions”* - *Ex: Art. 4 – The right to development. “(…) 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* ***in equal conditions with others.”***

In view of all the above, IJC hopes that these contributions can support the elaboration of this new human rights treaty and we remain at your disposal for any clarifications and additional contributions, through the e-mail deisianapaes@ijc.org.br.

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1. *Disability Inclusive Development in UNDP Guidance and entry points 03 December 2018*, p. 9. Available at: <https://www.undp.org/publications/disability-inclusive-development-undp#modal-publication-download. Last> access: 03.01.2022. [↑](#footnote-ref-1)
2. Inclusion International is a global network of persons with intellectual disabilities and families representing more than 200 federations in 115 countries across five regions, including the Middle East and North Africa, Europe, Africa, the Americas and Asia-Pacific. [↑](#footnote-ref-2)
3. *Disability Inclusive Development in UNDP.* p. 13. Available at: <https://www.undp.org/publications/disability-inclusive-development-undp#modal-publication-download. Last> access: 03.01.2022. [↑](#footnote-ref-3)
4. World Disability Report/ World Health Organization. The World Bank. 2012, p. 10. Available at: [9789240685215\_eng.pdf](file:///C%3A/Users/stella/Downloads/9789240685215_eng.pdf). Last access: 04.01.2022. [↑](#footnote-ref-4)
5. *Disability Inclusive Development in UNDP Guidance and entry points.* Op. cit., p. 13. [↑](#footnote-ref-5)
6. The interrelationship between development, fulfillment of rights and potentialities appears in articles 24 and 28 of the CRPD. In art. 24, when it highlights the right to inclusive education recognizing as one of its goals to provide full development of the potential of all human beings in a truly free society. In art. 28, when it affirms the right of persons with disabilities to an adequate standard of living and social protection, as well for their families, including the right to food, clothing, housing and continuous improvement of their living conditions. Available at: <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>. Last access: 12.01.2022. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)