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****MODERN ADVOCACY HUMANITARIAN
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The spirit of the Drafted Document

Subject: Overview and Some Ameliorative Proposals on the Draft Convention on the Right to Development, and Emphasis on Futuristic Individual Interpretation Motives for Ascertaining Effective Direction and Usage Harmony in the Spirit of the Construction of the Convention on the Right to Development

In view that the convention on the right to development will go functional as an integral, interrelated and interdependent instrument in line with several other internationally binding human rights related instruments, its presentation and ethics of construction needs to be fully appreciable within its textual dispositions. This should help curb down ulterior motives not in line with the positive sustainable development spirit with which it has been construed. After analysing the draft document the following worries and suggestions have been raised:

At the Level of the Preamble

*Paragraph 5 states: Recognizing that the realization of the right to development constitutes both the primary end and the principal means of sustainable development, and that the right to development cannot be realized if development is **not sustainable**.*

Major issues here lie with the aspect of sustainability; can the word sustainability be active and realistic without the human individual and concern? The draft convention has not specified how the individual human being would be harnessed within the concept of sustainability. The human nature, depending on the societal influences including, inter alia: childhood education, shock, poverty needs/hunger, lusts, and grieve, can transform individuals into very destructive or constructive human beings. Such changes may have grave or positive impacts to societal values depending on the reactions of such individuals, thereby, a serious threat or promise for right to development.

To elucidate further, the right to development encompasses the right to self determination or self-determined development. In fact, Article 3 (d) of the draft reads that: for *Self-determined development: the right to development and the right to self-determination are integral to each other and mutually reinforcing*. After behavioural change influx due to societal influences, the



values accrued within the individual become that which such an individual uses to seek and materialize his/her right to self-determined development. In this case, the risk factor is very high vis-à-vis what may be needed as standards for development rights within the society. The convention on the right to development needs to make acute reflections over this since it further emphasizes that the **human person is central subject** to all development processes:

Furthermore, more emphases are projected to the importance of the human person through paragraphs 21 which reads; *recognizing that the human person and peoples are the central subjects of the development process, and that development policy should therefore make them the main participants and beneficiaries of development*; and paragraph 22 which reads: *recognizing also that all human persons and peoples are entitled to a national and global environment conducive to just, equitable, participatory and human-centred development, respectful of all human rights*

In defence of the sole beneficiary character of the human person that is highly stressed through-out the document, there should be adequate provisions for addressing priorities for the individual level person-centred development needs towards achieving the positive rights to development expectations.

Part 1

Article 1 indicates that the *object and purpose of the Convention is to promote and ensure the full, equal and meaningful enjoyment of the right to development by every human person and all peoples everywhere, and to guarantee its effective operationalization and full implementation at the national and international levels.*

Why the omission of the **local level**? The right to development runs from individually driven perspectives and runs through smaller community groupings to the larger conceptions of nations. Article 1 seems limited for not mentioning local level. The draft document further justifies this worry in article 8 which reads that: *States Parties shall ensure that public authorities and institutions at all levels act in conformity with the present Convention.* Article: 3 (g) on International solidarity reads: *the realization of the right to development requires an enabling national and international environment created through a spirit of unity among individuals, peoples, States and international organizations.* Therefore, there is need to mention **local level** which is considered as smaller groupings of individuals and peoples under the State

Article 3 para (h) reads: *Universal duty to respect human rights: everyone has the duty to respect human rights, including the right to development*; do not see any relevance of this paragraph

Part III

Article 8 reads: *States Parties undertake to respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of race, colour, sex, gender, language,*

religion, political or other opinion, national, ethnic or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Convention.

The expression **other opinion** needs specification; it could be construed for terrorist opinions and even those against the core purposes of the right to development. Probably the word “positive” e.g. other “**positive opinion**” or another qualifying adjective could be added.

Article 13, duty to cooperate: para 2 (b) states: *To ensure that obstacles to the full realization of the right to development are eliminated in all international legal instruments, policies and practices*; this is an important point to reflect-on. The question is, wouldn't it be necessary that multi-level investigatory measures are put in place to analyse already available international legal instruments enforce, and ascertain that the derogatory instances are eliminated before the entry into force of the convention on the right to development? Else more specifications may be necessary towards addressing issues that may arise with respect to the application of the law of precedent or “**stare decisis**” in future litigations.

Article 13 paragraph 4 (b) states: *Implementing the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with relevant trade agreements*; Special and differential treatment is not explained in the commentaries... if the right to developments aims to reach the furthest behind, then there may be further need for an addition here, such as:

Ascertain equal and fair trade agreements in equity and favour of the least developed countries to promote their development efforts in a manner profitable and non-detrimental to their sustainable development prospects.

Article 16. With respect to gender equality, believing that there are other international instruments which cover in deeper lengths the issues at-stake, it's preferable to quote those instruments rather than repeating already properly consumed instance therein other instruments. Most assiduously, issues brought-in article 16 should reflect new elements not found and/or amending existing stances within other concerned international instruments.

Article 17. On Indigenous peoples: the primary problem for guaranteeing their rights will be that of their identification process. If the identification process is not appropriate, then the development right of all indigenous peoples may not be protected by this convention. Article 33 of the United Nations Declaration of Indigenous Peoples (UNDECLIPS) lays down principles for identifying indigenous peoples but does not indicate the obligation of States to adhere to such identification procedures. For proper enhancement of the development rights of indigenous peoples, the convention may need to guide State parties on how to go about the

process, probably the following thought could be a considered addendum for Article 17 of this convention, and also for article 33 of UNDERCRIPS paragraphs as 3 & 4¹:

.....3. States shall take effective measures to ensure that the contextual meaning of indigenous identity with regards to the indigenous particularity, relativity, originating sources and histories, divisions and probable inclusive futuristic scope be documented and endorsed by both the individual indigenous identifying peoples and the host State

..... 4. States shall take effective measures to ensure that the documented contextual meaning of an identifying indigenous people, before endorsement, is precisely inclusive of the indigenous past and present traditionally owned territories, cultural traditions and customs, and any probable future impacts of their cultural manifestations with regards theirs and other communities' archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 19. Impact Assessments

Para 2. States Parties shall take into account any further guidelines, best practices or recommendations that the Conference of States Parties may provide with respect to impact assessments. ... the word best practices is inconsiderate of global diversities, what best works in an area may not even work at all in another, thus, it may be more appropriate to use the adjective: **relative** best practices.

Article 21. mentions International Peace and security... paragraph 2. Highlights that: States Parties undertake to pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control so that the world's human, ecological and economic resources can be used for the full realization of the right to development for all; where is the part of individual peace and security?

The convention on the right to development is very specific on its respect to Human Rights, so, it cannot mention most sensitive issues such as Peace and end at the level of international considerations only. If it emphasises on individual persons with respect to human rights, it has to do same with respect to peace and security. Human beings also need to be disarmed from their corrupt and societal hateful mindsets. If this very sensitive part is not appropriately trashed, we'll face, in the future, what we faced in the past and still facing today. Disarming the individual from his/her destructive self, provides clearer and more secured path for his/her right to development, as well as, those of others. No matter how wonderful we develop our communities, those who manage such, if they are not acculturated in the values to protect and cherish, they will destroy it all, and send us all back to the start. The convention should

¹ Proposal comes from a well researched position on the issue of identity politics of over 400 indigenous groups and peoples across the world. See: NGYAH (2012). Indigenous Peoples and Politics: A global Analysis on Indigenous Peoples and Politics. Published: <https://www.amazon.com/dp/B09KN9YY6M>. pages 457, 458.



reflect in a manner to include some States' responsibilities for enhancing an individual consciousness building processes.

Article 22 indicates that: *States Parties, individually and jointly, undertake to ensure that: (a) Laws, policies and practices relating to development at the national and international levels pursue and contribute to the realization of sustainable development; local level is still not mentioned here.*

(b) *Their decisions and actions do not compromise the ability of future generations to realize their right to development...* the phrase seems incomplete, what should they do for it not to compromise? Probably: **by failure to institute mechanisms for enhancing the development prospects of such future generations.**

Article 23. para 2. *The present paragraph is not intended to create a hierarchy between the present Convention and other international agreements....* It does, already by its implication.

Conclusion

Some reasons why, much is currently disputed with respect to the current draft convention to the right to development may be because, it relates majorly to past instruments and is not very cognisance with modern times developmental dynamics, thus, creating some level of stakeholder acceptance tensions, not because it's not according to the norms, but because it partly, doesn't meet the expectations of many who believe, such a document would have been an exceptional ground breaking solution to many developmental challenges.

In "Building the Future we want", we must do what it takes in truth and ethics, to prepare the owners of that future in the spirit of its construction.

The **Right to Development**, the opportunity to free individuals from their stalling dogmas!

Most Humble submission

Additional inquiries

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