

A Panel Intervention
at the Roundtable “The Right of Development: Constraints and Prospects”
Geneva, 19 October 2011
Organized by OIC and OHCHR

Mr. Chairman
Excellences, Distinguished Delegates
Ladies and Gentlemen

I am deeply honoured and pleased to be invited to take part in this very important Roundtable and to speak in the company of my distinguished Colleagues at this panel.

This meeting has been convened in the context of the 25 Anniversary of the Declaration on the Right to Development, a document that forcefully stressed the interdependence of all categories of fundamental rights and freedoms, and their equal value for the human centered development.

The implementation of economic, social and cultural rights has a fundamental meaning for the right to development. This is to be re-emphasized in particular now when the world has entered the stage of a protracted economic and structural crisis. We have to remember what Amartya Sen said that the human rights implementation, as well as individual and society capabilities should be measured during the time of economic difficulties, not so much in times of prosperity. Economic downturns always primarily affect the rights of the poor and vulnerable.

On its part, the Committee on Economic, Social and Cultural rights stressed in its General Comment No 4 (1991) that [...] the obligations under the Covenant [on Economic, Social and Cultural Rights] continue to apply and are perhaps even more pertinent during times of economic contraction. A general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.“

In the light of its mandate to monitor the implementation of the Covenant and to make suggestions and recommendations of a general nature, the Committee on Economic Social and Cultural Rights is one of the central bodies that are in the position to contribute to a better understanding of the concept of the right to development. I hope that my intervention will provide some illustrations to this assessment while focusing on:

1. the interpretation of economic, social and cultural rights in the light of the relevant General Comments and Statements of the Committee, and
2. the Committee's practice.

Let us return to the one of the main sources of the criticism against the treatment of economic, social and cultural rights on an equal footing with civil and political ones. This is the observation that the rights of this category need resources and investments for their implementation and thus, are subject to fluctuations caused by the cycles of development. According to some commentators, this deprives economic, social and cultural rights of one of the main characteristics of human rights, i.e. their justiciability and enforceability. These reservations might be in some cases behind a regrettably slow process of the ratification of the Optional Protocol to the ICESCR.

A lot has been said to disperse these doubts. And, it would be a mistake to overlook the progress achieved in the interpretation of the content of economic, social and cultural rights, including their legal dimension. 13 of 21 of its General Comments, the Committee on Economic Social and Cultural Rights has adopted explicitly to that end, and this process continues. Moreover, the jurisprudence of the domestic courts increasingly provides its own clarifications in this respect.

For example, in its Certification judgment (1996), the Constitutional Court of South Africa stated that the fact that economic, social and cultural rights almost inevitably give rise to budgetary implications does not seem to be a bar to their justiciability and in the famous Grootboom Case (2000) considered by the same Court, one can read: "The question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case."

According to the Covenant, the so called progressive realization clause of its Art. 2 is to be interpreted as establishing State Parties' obligation to undertake steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of the available resources, with a view to complying with the commitments under the Covenant. This is, as the Committee emphasizes, an obligation of result in such terms that steps undertaken by the State Party should lead to the full realization of the rights recognized by the Covenant. General Comment No 3 underlines that "Even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances, including monitoring the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion."

The following elements of the concept of the right to development as recognized in the international documents, in particular in the 1986 United Nations Declaration, are reflected here:

- 1) the obligation of States to implement internationally recognized human rights,

- 2) the obligation of each State to create conditions needed for the implementation of economic, social and cultural rights, including by making available adequate resources to that end,
- 3) the obligation to get engaged in international cooperation with a view to implementing economic, social and cultural rights; this obligation resting with countries which need assistance and support corresponds with the responsibility of those countries that are in the position to offer such assistance and support; this obligation should also be interpreted in the context of Article 28 of the Universal Declaration of Human Rights that proclaims everyone's entitlement "to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." As we know, the WG on the Right to Development and its Task Force have made an important contribution to the interpretation of this Article of the Declaration.
- 4) the obligation of States to optimize the scope of the implementation of economic, social and cultural rights, fully exploiting the potential of available resources at a given stage of development.

While the coverage by the discussed General Comment 3 might be, of course, further analyzed, it is to be stressed that several other Committee's General Comments and Statements are related to the right to development. Particular attention should be paid in this context to its statements on globalization (15 May 1998), poverty (4 May 2001), , as well as on the World Food Crisis (20 May 2008), on the Millennium Development Goals (September 2010), and on the Right to Sanitation (19 November 2010). Moreover, other General Comments and Statements are based on the same methodology, recognizing the linkage between development and human rights.

At its last session in May, the Committee adopted two Statements that are closely linked to the relationship between the economic, social and cultural rights and sustainable development.

In its Statement on the Importance and Relevance of the Right to Development the Committee highlighted the topicality of the main ideas of the 1986 Declaration and the complementarity between "the rights contained in the Covenant and the right to development." The Committee stressed that the Covenant and the rights enshrined therein "inspired and shaped numerous fundamental elements" of the right to development.

In view of the Committee, the right to development and economic, social and cultural rights face similar challenges, such as a) poverty eradication; b) the empowerment and active participation of women, disadvantaged and marginalized individuals and groups; c) the employment and fair distribution of income; d) the provision of an adequate standard of living, including food and housing; health services; and education; and f) the access to and the enjoyment of culture.

The Statement also points to the Committee's practice to consistently recall in its dialogue with State Parties "the commitment of developed countries to provide at least 0.7 per cent of gross national product as official development assistance (the Monterrey Consensus of the International Conference on Financing for Development), and the duty

incumbent on all States to cooperate in the promotion of development and respect for all human rights and fundamental freedoms, in accordance with the Charter of the United Nations.”

The Committee considers that the right to development, based on the core principles of equality, non-discrimination, participation, transparency and accountability, at both the national and international levels, establishes “a specific framework within which the duty to provide international cooperation and assistance has to be implemented.” While recognizing that monitoring the implementation of the rights protected by the Covenant contributes simultaneously to the full realization of the relevant elements of the right to development, the Committee committed itself to continue to address the eradication of poverty and underdevelopment and the creation of conditions for achieving economic and social progress and development for all in the framework of the examination of the reports submitted by States parties and in its dialogue with them.

The other Statement adopted by the Committee at its last May session is also related to development and human rights. It is focused on the obligations of States regarding the corporate sector. While noting the contribution of this sector to development, as well as instances of its adverse impact on economic, social and cultural rights, the Committee reiterated the duties of State Parties to respect, protect and fulfil these rights in the context of the corporate sector activities. The Committee also committed itself to devote special attention to the relevant obligations of States Parties in the future and called on them to include information in their reports on challenges in this respect, as well as called on other stakeholders to provide relevant information to the Committee.

The presented position taken by the Committee in its General Comments and Statements is also reflected in its concluding observations adopted after the review of State Parties reports. Let me refer to just few examples.

On several occasions, the Committee emphasized that the benefits of development, as well as costs of regress in development should be distributed in a just and fair manner within the society, and not negatively affect only particular disadvantaged groups, including women and minorities. In a large number of concluding observations, the Committee emphasized that development must not be achieved thanks to child labour or the exploitation of women. One of the overarching themes is the protection of the rights of indigenous peoples in the context of their access to natural resources and the environment. The Committee repeatedly expressed its concern about the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources. Another issue raised on many occasions is that while granting economic land concessions (regarding for example tropical forests, mining operations, oil exploration) States must respect the requirements of sustainable development.

The Committee stressed on various occasions that disparities in the enjoyment of development, present between various groups of people, must be eliminated. This was

said *inter alia* in the context of poverty, education, disabilities, discrepancies between regions of a state, labour markets and women's employment situation.

I hope that these examples illustrate the attachment of the Committee to giving the linkage between human rights and development, and thus to the right to development itself, not only conceptual but also practical meaning. The analysis of this doctrine shows that it will be further developed in the future.

Let me finish my intervention by pointing to the fact that the entering into force of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights and subsequent jurisprudence in individual cases would not only strengthen the protection of individual complainants but also significantly contribute to the enhancement of the role of economic, social and cultural rights in ensuring the human dimension to development.

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