

## **Translated Transcript of the Statement by Isabelle Durant, Chair of the Expert Mechanism on the Right to Development**

### **25<sup>th</sup> session of the Working Group on the Right to Development**

#### **5<sup>th</sup> Meeting, Agenda Item 4.4 – The interrelationship between the right to development and the International Covenant on Economic, Social and Cultural Rights**

Thank you very much, Chairperson. I will be talking in French. And in so doing, I will be aiming to share a few comparative elements with you, comparing the rights of development on the one hand and the Convention on Economic, Social and Cultural Rights on the other.

Discussions around this matter can be approached in different ways. Either we could have a legal reading, thesis if you will, of almost every single article in these two texts, the declaration on the rights of development and the Convention on Economic, Social and Cultural Rights on the other hand.

Obviously, that would be very useful and around this table, on this panel are individuals who are, I am sure, far better qualified to undertake such work. Obviously, that is very advantageous to a council like the Human Rights Council which works on the basis of those rights. The other approach which is the one I want to take myself, is an approach which aims to draw connections and the causality between the provisions in the two instruments and this with a view to seeing through those rights and through the tools at the disposal of governments to implement those rules.

So, all of the rights protected by the Convention on Economic, Social and Cultural Rights are necessary, essential even, to ensure the realization of the rights development. The right to work, health, education, water, cultural rights, appropriate housing, healthy food, appropriate living conditions and others. I will not enumerate them all. In addition to protect those specific rights enshrined in that Convention on Economic, Social and Cultural Rights we have general provisions and principles which include non-discrimination on any basis, sex, gender, race, colour, language, religion, opinion, social origin or belonging to a minority. A second important general principle is the progressive realization of the rights.

This does not mean that governments do not have any obligations from the outset on economic, social and cultural rights until they reach a certain level of development but rather that they need to make progress, they need to move forward, they need to pass certain thresholds in terms of the full implementation of those rights and this on the basis of the resources that those governments have at their disposal. They must simply demonstrate that they have allocated certain resources to reach certain stages in the implementation of these rights. That is the second principle.

And the third general principle is the maximum use of one's resources. So as a function of what they have at their disposal, governments must place the maximum possible level of resources at their disposal of ensuring the rights. So, to ensure that the right, for example, to access to minimum health services is not kept at the bare minimum but is extended as much as possible to the whole population.

And now the rub is – and of course the person talking to you now is a former minister, so I have seen this at the cold face – the rub is, to see how you can extend this beyond that minimum threshold. And this is where we see the Convention on Economic, Social and Cultural Rights coming into play via something which is central to development and that is the obligation to cooperate. The Convention

on Economic, Social and Cultural Rights identifies international cooperation as a relevant parameter for measuring countries' progress in implementing their economic, social and cultural rights.

And as you know, there is a regular review of each country which has signed up to that convention to identify the progress that is been made and there's a number of comments and recommendations that are made as a result. And if I look at some of the recommendations made to countries such as Sweden, France, Italy, during the review of the implementation of that convention, it is precisely on aid to development and international cooperation that recommendations are made to ensure those countries better contribute and better comply with their obligations around international cooperation with less developed countries.

But the right to development also highlights certain normative principles relating to international cooperation because it is not an option. This is not a choice for the right to development. You cannot choose to cooperate or not. It is an obligation incumbent on parties. The fact that development is an inalienable right means that there is indeed an obligation to cooperate. The right to development also ensures that the rights holders of these rights to development must participate, contribute and benefit from social, economic and cultural and political development. They should also determine their own development priorities. So, it is not up to the countries financing international cooperation to set the rules. And the outcome of this cooperation process must go hand in glove with international priorities but also human rights more generally.

So, to ensure that all of these principles and rights move forwards and the right to development in general, it is clear that it is not sufficient to adopt and ratify international regulatory texts. Once you have that in place, that needs to be translated into national domestic legislative text. So, in each country you need to set up domestic regulations and then subsequently, that must be subject to more specific policies, action programmes with deadlines and there should be decrees as well for the implementation of different points under those action plans. It is clear that we need to have oversight of the implementation of those rights because it is not sufficient either simply to vote through laws. You need them to be implemented.

And in that vein, it is important that there are penalties if those programmes are not implemented. They might be political penalties at the ballot box, or they might be through the legal route with courts where you see the work of parliamentarians coming into play. They can protest against governments and ensure oversight of whether or not the programmes they have adopted to implement rights have been undertaken, or worse still, whether or not those rights have been violated by the state in question or the majority party and the government in power and that of course requires courts. A constitutional court and a public prosecutor's office that can look at and analyse the alignment between the constitution and these rights. Or – and this system plays out differently in Europe and America - that the states and the courts, the legal system is able to analyse and penalize also violations both of rights and also the non-implementation of policies and programmes which should have been implemented.

And finally, last but not least, and this is not the easiest thing in all countries in the world, developed or developing: You have to evaluate these public policies, and this means that you must have data. You have got to have figures, otherwise you cannot assess your policy. You cannot simply look at it. You need evidence figures that demonstrate progress that may or may not have been made in terms of access to a range of goods and services or rights. And to have that you must have data. You must have administrative competence to carry out that analysis and collect the data as is also the case, of course, for the SDGs. So this evaluation needs to be undertaken among other places in the Universal Periodic Review, here in the Human Rights Council, where you regularly assess the progress made

country by country towards the implementation of human rights and that is a peer review, it is the other countries that analyse that. So, everything I have just said regarding the supranational national action programs, implementation of policies and oversight of policies and then perhaps the penalties, either political or legal, all of that is a fairly complex roadmap. It demonstrates that it is important to vote through and adopt international text but between their adoption and their implementation, there's a long road to walk. It has to include various stakeholders, civil society, NGOs, the media and it is not easy. It is not easy anywhere in the world and I am not here to assert that one has done better in some countries than other countries. In my own country, the state is in the dock for not implementing or respecting the Geneva Convention in the sphere of hosting refugees and this affects, therefore, any state regardless of its level of development or the level of resources that they have to bring to bear to implement these economic and social rights.

That is what I had to share with you. And I can see there are students here joining us at the back of the room. I hope that my small brick in the wall has been able to contribute to your understanding of the broad brush strokes of international law and how that is implemented as concretely as possible and that is where, of course, things become complex. Thank you for your attention.