

## **Transcript of the Statement by Michael Windfuhr, Member of the Committee on Economic, Social and Cultural Rights**

### **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**

Thanks, Chair, and thank you very much for the invitation. We sent as a German Institute for Human Rights some comments on your second revised draft in May last year, but I have to say at the beginning I am not speaking on behalf of the Committee. We do not have a formal position adopted. I am a member of that Committee, and I will describe also some part of our work and the outcomes of this, but we are drafting currently a general comment on the relationship between economic, social and cultural rights and the environmental dimension of sustainable development. Environmental limits become more important, and this is to be reflected in this general comment, supposedly to be coming out next year.

Let me use five arguments before I close. First, the right to development, the draft which you have presented, has two basic components. It is first saying it is an individual right and it asks for an enabling national order to enable development and it is also an international dimension. We need a systematic international order which is supportive to the realization of this right to development. I think it is the link between the two which is extremely interesting for the debate today. Our covenant covers most of the rights you are referring to in your second draft, particularly in Article 13 and it is also important to say that civil and political rights are included, particularly the right to participation and transparency, but it has more or less mentioned all the rights like food, water, housing, health, education and we need to think about how this national order to realize these rights and the international one can be brought together. I think that is what is interesting for today.

Secondly, I would say we have developed in the Committee on Economic, Social, Cultural Rights a broad understanding of these economic, social, cultural rights which were not so much in the focus of international human rights discourse before the Vienna Conference of Human Rights. So since then, we know the human rights are indivisible, so for realizing human dignity we need both, not only civil and political, we need also in the same footing economic, social and cultural rights. We have developed an interpretation for the national application of these rights and we have these articles talking about progressive realization, the states using the maximum of available resources – Ms Durant has mentioned this – you have to apply all these rights by non-discrimination, but we have also developed an understanding what are the obligations states have starting with General Comment No 12 on the right to food, we have described their obligations to respect, protect and fulfill. Respect means you have to control your own behavior that it does not lead to violations. Protect means you have to control third parties like business, for example, and fulfill means if there is still a need to progressively realize these rights, what are the conditions you have to follow when you talk about this.

Since some years, 2017, 2016, we have more and more developed also the extra-territorial dimension of these economic, social and cultural rights. That is where states have responsibility for human rights violations abroad, by own policy measures. They do – for example, European agricultural subsidies were extremely destructive for many small holder farmers in developing countries, to give you one example. Again, we have developed this understanding and we are applying progressive realization, maximum of available resources, the same categories, but also respect, protect, fulfil as obligations. So do not do harm by own actions abroad on citizens in other

countries. Control is an obligation to protect your own business which is acting abroad that it does not contribute to violations and help in the fulfilment by providing, for example, aid, financial support, technical advice, all this needs to be mentioned at that level. So, this dimension has been developed particularly with our general comment 24 on business and human rights but also the last one on land which we have published a year ago.

But there is still a component which is not so much covered. We discuss elements of this international cooperation or the international economic order like maybe the sufficiency of development aid or we had one country under scrutiny last session which is now binding development aid to the return of refugees, things like that. So there is a lot of things we can discuss about aid. There is a lot of things we can discuss about climate finance not being adequate, maybe some of the climate finance instruments might lead themselves to human rights violation. We talk about taxation in our committee, negative subsidies which are affecting maybe the development of other countries. These are all important elements, but I think that is where the right to development is really – and your draft text – extremely important. You set the tone for how to phrase the international economic environment or international order which helps to deal with these issues. So, I think our committee has worked very well on what states should do nationally and extraterritorial but this international dimension which is also part of our covenant is very much more detailed in your text and this is really appreciated.

So just to take one example, it is my third element why it goes together. Take land, for example. If land is not protected, people have not registered land use title security in this and then an investor comes, they are often forgotten. It is an issue you have to deal with nationally. It is a national obligation that you register, administer land titles in a fair way, not only maybe property titles but also land use titles as we are saying in our general comment on land. If you do not have a national regulation, if then investors come, everything is a mess for people who are at the fringe of the society.

So, you need to have a good national recognition of land issues but then you have also the international elements coming after the world financial crisis in 2008, we had this big wave of investment in land in Africa and Latin America by investors seeking to profit for this. Or now we have a new wave coming for, let's say, nature-based solution on the climate agreement or other solutions. So we have a lot of interest and land becomes one of the most scarce resources we have and we have to deal with this in the climate agreement, we have to deal with this in the biodiversity agreement but we also need the national level. Both needs to be mixed. If we are missing one, it is not good.

So therefore, we have to really collaborate and think about how we can develop the understanding of what states should do nationally and internationally and what we need is framework conditions at the international level. And particularly relevant is this for the areas I have mentioned already, let's say trade policies. We have no agreement in the WTO on agricultural subsidies yet after 20 years of negotiations of this. On patents, we discussed this when we had the COVID crisis, on negative subsidies on fossil fuels and agricultural subsidies. We have now a start of a work on the Convention on taxation which might be helpful to have at least some minimum taxation level or maybe the issue of debt just to phrase several of them.

So how could that be maybe then thought about? And I make a specific proposal which we discussed with some of the national human rights institutions I am working for and knowing maybe that there is a lot of discussions for new treaty bodies at the UN level and not so much resources available, what would be a best way to bring this together? And I make a specific proposal we might discuss

later today also maybe it would be good to think about of having this second draft Convention you proposed as an optional protocol to the covenant on economic, social and cultural rights.

Then it could be signed by all the Member States. The national implementation would be still implemented in the way it is done by the covenant and it is supervised by the treaty body but there could be an extra working group looking into the international dimension of this. I think that would be helpful also for the Committee of our side to really look into the policies and the lobby influence and the policy development initiatives coming from different states. So, this extra working group could look into the international dimension much more states who have signed this optional protocol are investing into this.

That could help to deal with much more with this international order and to have a forum where the right to development could really benefit, being incorporated in the existing human rights system having a strong place and there would be a framework where we could make the link between necessary national implementation of these economic, social and cultural rights and maybe the international framework we would need to guarantee that these rights can be implemented. I am afraid that if we develop 3, 4, 5, 6 new treaty bodies we have too many. There are no resources for this. The states are saying we have problems in writing all the reports we have to do and who will read all of this.

So, I think to strengthen the system, bringing those elements together which are naturally belong together I think is already a very important step in this component. So, it would help also to avoid duplication of work. If you would have a treaty body on this convention which would look into the national implementation of economic, social, cultural rights it is already done. If you look into the implementation of civil and political rights, women's rights, children's rights, it would already be done.

So having a strong stay in this by strengthening this international economic order perspective in the supervision of economic, social, cultural rights would be a recommendation from my side. It would also help to enhance synergies in the human rights treaty body system or human rights system as requested from the resolution 68/268 from 2014 on treaty body strengthening.

Let me close by raising three remarks which I think are important also when looking into your second draft which I would like to mention today. The first one is there needs to be a closer link between development and the planetary boundaries which we have, the sustainable development component of this. If we have more and more resource constraints, we have to think about much more actively how to better distribute the resources we have. They are common and differentiated responsibilities. This needs to be brought together and that would be also supported maybe by a possibility to work together with the committee on economic, social, cultural rights. But this limits which we have on environmental side needs to be reflected. It could be by combining your Articles 4 and 23 in your draft.

My second point is there are an increasing number of conflicts between individual rights, group rights and the international development order. How to protect and make sure that individuals or group rights, indigenous peoples and others are protected when international standards are set on climate policies, nature based solutions and so on. There needs to be a forum where this can be discussed and it is extremely important to see that there might be strong conflicts on this.

My last point is to mention that the situation of human rights defenders deserves particularly mentioning in this context. If you see the latest reports of the special report on human rights defenders, most of those who are now struggling for let's say in their role as human rights defenders

are those defending land rights, environmental rights, much more on these economic, social, cultural rights which are now there. So there needs to be link and this needs to be mentioned that those who are advocating for maybe a fair and just international order and a fair and just national order are also protected in the way they need. So, my call is using synergies, developing a common understanding between the link, what needs to be done nationally, extraterritorial and in the international economic order and I made a proposal how this could be combined for discussion. Thanks a lot for your attention.