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The interrelation of the ICCPR and the Right to Development

Your Excellencies
fellow panelists
and distinguished delegates.

My Intervention on the interrelationship between the right to development and the International Covenant on Civil and Political Rights, will draw on my experience chairing the drafting group of experts for the draft International Covenant on the right to development, as well as being a member of the expert mechanism on the right to development.

My starting point for this discussion is that all human rights are equally important, indivisible, interdependent, and mutually reinforcing. Article 1 paragraph 1 of the Declaration on the right to development recognizes that development as a right is one where all human rights can be fully realized. In other words, no trade off with civil and political rights is permitted in the process of realizing the right to development, nor is the lack of development – especially if it is misunderstood only in economic terms – a justification for the denial of Civil and Political Rights.

Let me address an issue often raised. The relationship between the right to development and civil and political rights is sometimes articulated as a contest between a human rights-based approach to development and development-based approach to human rights. The former approach suggests that civil and political rights are a precondition to development, and the latter suggests that development is a precondition for civil and political rights. Both these approaches entirely miss the point about the normative framework of the right to development, which recognizes development itself as a human right, not that one is a precondition for the other. And since that is the case, civil and political rights are vital in the process of development. Likewise, the outcome of the development process can and should enhance civil and political rights. The draft covenant is built on this framework.

There is no doubt that the denial of civil and political rights is a major obstacle to the realization of the right to development, as the declaration and now the draft covenant acknowledge. Civil and political rights can also be instrumental in better advancing the right to development. Indeed, the three main elements of the right to development – the entitlement of the rights holders to participate in, contribute to and enjoy development – on a nondiscriminatory basis are all captured in the ICCPR in various provisions: the rights to nondiscrimination, liberty, freedom of speech and expression, equality before law, freedom of thought and conscience, holding of opinions without interference, peaceful assembly, freedom of association with others, opportunity to take part in public affairs, are all civil and political rights without which the right to participate in, contribute to, and enjoy development by individuals and peoples cannot be realized. The normative framework of the right to development can also help advance civil and political rights in concrete ways. As is well known, there are three levels of obligations on states under this framework. One, the obligation to realize this right from national measures within their jurisdiction, two, the obligation not to adopt national measures that violate the right to development of those not strictly within their jurisdiction, and three, the obligation to collectively realize this right

through international cooperation and international organizations and other partnerships. In contrast, the focus of the ICCPR in terms of its Article 2, paragraph 1, unlike the ICESCR, has mostly been on the obligation of each state to respect and ensure civil and political rights to individuals within its territory and subject to its jurisdiction.

It is sometimes suggested that the term “subject to its jurisdiction” includes only persons in other territories under effective control of state and excludes an obligation to respect civil and political rights of individuals and peoples beyond that context. The Human Rights Committee has however, rightly clarified in its general comment number 36 of 2018 that the term “subject to its jurisdiction” includes persons located outside any territory effectively controlled by the state, whose rights are nonetheless impacted by its activities in a direct and reasonably foreseeable manner. Indeed, national conduct of states, both acts and omissions can have adverse impacts on civil and political rights of individuals in other states. Subsidies that are illegal under the WTO, given to domestic producers in one country can drive individuals in other countries to loss of livelihoods and indeed lives, as has been the case with cotton producers in Western and Central Africa. Non regulation of domestic companies by home states or their human rights impacts elsewhere, can and has contributed to violations of civil and political rights in hosts states, including the right to life.

I believe that the normative framework of the right to development, which recognizes its realization as a common concern of humankind, is very helpful to help ensure better realization of civil and political rights everywhere.

Finally, I must address an unfortunate myth about the right to development, which the ICCPR helps clearly dispel. Some stakeholders do not accept the collective dimension of the right to development and insist that it is only an individual right and not also a right of all peoples. Thankfully, the ICCPR explicitly rejects this proposition. The very first Article of the ICCPR as is also common to the ICESCR stipulates that all peoples have the right of self-determination by virtue of that right they freely determine their political status, and I quote, freely pursue their economic, social and cultural development. And the right to self-determination as a civil and political rights implies the collective right of all peoples to development, and therefore, the rejection of the collective dimension of the right to development amounts to a rejection of the very first Article of the ICCPR.

Ladies and gentlemen, there is nothing to be gained by quarreling with long settled and unequivocal international law. It does not advance the larger Human Rights Project. Instead, it harms it. Let me conclude by saying that the fundamental basis of the draft International Covenant, on the right to development is that all rights civil, political, economic, social, cultural, environmental and development are equally important. It seeks to bring the right to development at par with and at the same level as the ICCPR and the ICESCR rights. Without civil and political rights, the right to development cannot be advanced, without the right to development, civil and political rights cannot be addressed. Thank you.