

The Path and Method Innovation of Implementing the Right to Development under the Framework of the International Covenant on Economic, Social and Cultural Rights

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Before the formal adoption of *the International Covenant on the Right to Development*, in order to promote and strengthen the guarantee of the right to development, it is necessary to make full use of the existing mechanism of human rights treaty to enhance its legal enforcement. *The International Covenant on Economic, Social and Cultural Rights* is one of the best options.

Regarding the internal relevance between the right to development and economic, social and cultural rights, the United Nations agencies have adopted relevant resolutions and general comments, made continuous efforts and carried out a lot of productive work. However, to date, there are still a large number of problems that need to be solved, which mainly embodied in the unclear concept, ambiguous relationship, vague obligations, lack of mechanism, poor supervision and so on. To this end, I propose six substantive countermeasures and suggestions:

1. In terms of concept, the mutual inclusiveness and relevance between the right to development and economic, social and cultural rights should be further clarified, so as to achieve a fundamental transformation from an ambiguous loose relationship to a concrete interactive relationship.

2. In terms of norm, the legal relevance between *the Declaration on the Right to Development* and *the International Covenant on Economic, Social and Cultural Rights* should be explored in depth, so as to achieve a fundamental transformation from a moral relevance to a legal relevance, and therefore enhancing the legalized and mandatory relationships between the two.

3. In terms of procedure, the perspective of the right to development should be incorporated into the implementation procedures of *the Covenant on Economic, Social and Cultural Rights*, so as to achieve a fundamental transformation from focusing only on substantive content to paying equal attention to both substantive content and procedures. The inherent shortcomings of the Declaration as soft law can be overcome by implementing and protecting the right to development through the procedural mechanisms for implementation provided by the Covenant and its Optional Protocol, which includes national reports and the consideration of these reports, the formulation of recommendations and observations, individual and national communications and the conduct of investigations. Soft Law can consider designing a formal legal procedural mechanism, which includes specific links, steps and processes, and aims to change the current absence of formal legal procedures to hold States accountable for their international obligations.

4. In terms of obligation, the legal nature on the international community's obligation to realize the right to development should be defined, so as to achieve a fundamental transformation from a moral obligation to a mandatory legal obligation, and thus enhance the legally binding nature of obligation to implement the right to development.

5. In terms of supervision, the functions of Covenant's supervisory mechanism on implementing the right to development should be strengthened, so as to achieve a fundamental transformation from the emphasis on advocacy provisions to the emphasis on effective supervision. For example, the term "international cooperation" appears six times in the content of the Covenant, while the term "international assistance" appears three times. However, in terms of effectively implementing the right to economic, social and cultural development through international assistance and cooperation, the supervisory mechanism set by the Covenant is weak and has little effect. The existing mechanisms and institutions thus should be improved instead of just staying around oral.

6. In terms of institution, consideration could be given to establishing a joint meeting mechanism under the auspices of the United Nations Human Rights Council specifically responsible for realizing the economic, social and cultural aspects of the right to development within the framework of the Convention, with the participation of the United Nations Committee on Economics, Social and Cultural Rights, the mechanism of the right to development, and all agencies, mechanisms and States within the United Nation system relevant to economic, social and cultural development. The secretariat of the joint meeting mechanism can be set up in the Committee on Economic, Social and Cultural Rights and be responsible for daily management, which includes organizing meetings, collecting information, soliciting opinions, etc.

Since economic, social and cultural rights are not fully equivalent to the right to development, while *the Covenant on Economics, Social and Cultural Rights* does not explicitly recognize the right to development as a human right, it is necessary to adopt some procedural approaches in order to strengthen the relevance between Covenant and the right to development from the following two aspects:

1. The United Nations should formulate a general comment on *the International Covenant on Economics, Social and Cultural Rights* to further clarify the specific scope, fields, limits, elements and methods of the Covenant in protecting the right to development.

2. State parties to the Covenant may, in accordance with Article 29 of the Covenant, propose the amendments to the Covenant to the Secretary-General of the United Nations in order to determine specific path and method of implementing the right to development through the Covenant.