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**Statement by**

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**SPECIAL RAPPOORTEUR ON THE NEGATIVE IMPACT OF  
UNILATERAL COERCIVE MEASURES ON THE ENJOYMENT OF  
HUMAN RIGHTS**

**30 Years After – A time for considered reflection and joint action to use the Right to  
Development for effective and sustainable development at all levels**

**OIC- IPHRC and OHCHR  
International Seminar on the “Right to Development”**

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Abu Dhabi



Excellencies,  
Dear Friends from the OIC Family,  
Ladies and Gentlemen,

We are commemorating this year the 30<sup>th</sup> anniversary of the adoption by the UN General Assembly on 4 December 1986 of the Declaration on the Right to Development.

The Right to Development proclaimed in the Declaration, however is interpreted differently. Some define it as human rights-based development, others interpret it as meaning that human rights are intrinsic to development and yet others construe development as an entitlement of individuals and as a collective entitlement of peoples. The first notion is the preferred option of some donor countries. According to this notion, it is a domestic entitlement of individuals to be claimed from their own State. It is closely linked to the conditionality recipient States have to meet to obtain donor endorsement. The second notion i.e. that human rights are intrinsic to development has been advocated by UNDP. The implication is that all development action is by essence human-rights based. If the human rights component is lacking, then such action is not really developmental. The third interpretation goes further to claim that development itself is an individual entitlement that can legitimately be claimed and enforced at domestic level and for which peoples are also entitled to enabling action at the international level. This is the thrust of the Vienna Declaration and Programme of Action and of many Human Rights Council and General Assembly resolutions including the 2030 Agenda. It is recognized as a universal right that is applicable *erga omnes* to donors as well as to recipients and whose enjoyment should be promoted among individuals as well as between States.

The Right to Development like all human rights should be upheld primarily by States in relation to the population on their soil, whether natives or migrants. This being so, accountability does not stop there; it extends to the actions of States or groups thereof that have a development impact, whether beneficial or questionable, on other States or population groups outside their territorial jurisdiction. Without in anyway belittling the importance of observing the Right to Development at domestic level, I will limit my remarks to the international projection of this right.

My remarks will revolve around two issues:

- The Declaration on the Right to Development at 30
- Whence the Right to Development after the adoption of the 2030 Agenda for Sustainable Development?

## **I. The Declaration at 30**

We rejoice that there has been a flurry of initiatives this year to breathe new vitality into the implementation process of the Declaration including *inter alia* panels on this theme organized by the UN General Assembly in September 2016 and by the Human Rights Council

in June preceded in April by an eventful meeting of the Working Group on the Right to Development so ably chaired by Ambassador Zamir Akram.

The thirtieth birthday of the Declaration is an opportunity to update the evaluation of its implementation.

There are indeed good news and bad news involved in the commemoration of the thirtieth anniversary.

The good news is that the proportion but, alas! hardly the number, of people living in poverty or confronted by hunger, has fallen over the years since the 'eighties. The main cause of this favourable evolution can be attributed to China where reforms implemented since 1978 have reduced the percentage of poor people from 53% to 8% of the total, thus helping 500 million people out of the poverty trap.

The good news is also that the Human Rights Council at its recent 33<sup>rd</sup> session has adopted a resolution, still referred to as L.29 on the Right to Development. This resolution *inter alia* institutes a Special Rapporteur on the Right to Development. The person to be designated is likely to provide impetus to the Working Group. The outstanding leadership of its Chairman-Rapporteur is trying to energize the slow progress of the Group through submitting a list of 4 standards relating to core human needs that should not be controversial. The Special Rapporteur should also see to the fulfilment of this right in the context of the 2030 SDGs and help mainstreaming it system-wide. The right to development should however not be "mainstreamed" in the Secretariat of the OHCHR but should remain a distinct unit as it is now.

It is unfortunate that despite the consensus adoption of the SDGs, a group of developed countries abstained while two even voted against this year's HRC resolution on the Right to Development. I hope they will not let this affect their inter-action with the new mandate-holder.

The bad news is that the Right to Development as envisioned in 1986 has not made spectacular progress.

Thus the full realization of the right of peoples to self-determination which is mentioned in article 1 of the Declaration continues to be denied to the same peoples that remain under foreign occupation.

One can also question the degree of progress achieved under article 3.1 in creating international conditions conducive to exercising this right in compliance with legal provisions concerning friendly relations between States. Despite an encouraging policy evolution concerning the lifting of unilateral coercive measures of a comprehensive nature targeting two countries, implementation progress is slow. One indeed witnesses with concern a consolidation or progression world-wide of other unilateral coercive measures. Currently, one

full third of humanity is estimated, in the absence of centralised and standardized data, to live in countries targeted by such sanctions. Unlike Security Council sanctions, such unilateral measures do not have broadly agreed international legitimacy.

Another theme advocated by the Declaration, this time in article 3.3 was the new international economic order as then envisioned. Kenya's ambassador to the UN, who was actively involved in the SDGs, criticized the previous NIEO recently as an ideological position, a "twentieth-century perceptions of development" that was "old and tired". This point of view could pave the way for an international debate short on re-structuring the world trading and financial systems and long on domestic policy reforms. Hence the importance of introducing a corrective to such a view. I would mention in particular the principle of special and differential treatment enshrined in goals 10.a and 14.6 of the SDGs to which should be added the principle of common but differentiated responsibilities reaffirmed in section 12 of the Declaration on the 2030 Agenda and of course goal 17. These were indeed key components of the "twentieth century perception".

I would warn against a "modernization" of the development debate that would eschew the North-South divide and with it some basic rights to justice and equity. The developing countries must be aware that they would thus run the risk of being caught back-footed in the international arena. Indeed they would have to fall back on a downbeat plea for "national policy space" as a poor substitute for sovereignty or for a more equitable international system. Nor should "modernity" imply that accountability of States to one another or of transnational corporations to host States should be dwarfed by international accountability of developing States for their domestic policies.

I am not quite sure how far we have moved toward general and complete disarmament mentioned in article 7 of the Declaration. What is certain however is that precious little resources supposed to be released by this putative process have been used for "comprehensive development in particular that of the developing countries."

Finally on the formulation, adoption and implementation of policy, legislative and other measures at the international level stipulated by article 10 of the Declaration on the Right to Development, the SDGs have indeed been informed by the Declaration. However, little progress has been achieved in legislating internationally on this theme, either in the form of a Convention or even of guidelines. Yet according to article 3.1 of the Declaration, States have, *inter alia* the responsibility for the creation of international conditions favourable to the realization of the right to development. This is reinforced by article 3.3 stipulating that States have a duty to cooperate with each other in ensuring development and eliminating obstacles thereto. The same language is included in the Vienna Declaration and Programme of Action, article 10.

The right to development has further been denied as a result of the devastating impact of the economic and financial crisis of 2008 which has deprived the many, in particular the youth in the Global South, of their livelihood

This right has been further jeopardised by organised violence in the form of foreign invasions, attacks and sustained foreign occupation during the past decade and a half, creating a vacuum favouring the rise of non-State violence and in particular the sprawl of terrorism. Unilateral coercive measures claimed to be imposed to uphold human rights in targeted countries have, ironically, often resulted in undermining basic human rights indiscriminately. In some cases, these measures have caused loss of life by barring access to treatment of cancer or diabetes. In other cases, they have caused loss of employment for large segments of the population. People thus thrown out of work have contributed notably to the swelling of flows of migrants fleeing conflict, to the very countries imposing sanctions on their home country, thus increasing xenophobia in the destination countries.

In summary, thirty years later, the right to development remains an unfulfilled promise for billions of individuals and for peoples, in particular in the Global South.

## **II. Whence the right to development after the adoption of the 2030 Agenda on sustainable development?**

I would argue that the contents of the SDGs are covered by the right to development but that the latter encompasses also the human rights dimensions of development provisions included in the decisions of all other international and regional fora. Recent examples of such issues are those covered by the Addis Ababa Action Agenda on Financing for Development and the Paris Conference on Climate Change.

Here I will comment first on issues of methodology and then on some selected substantial right-to-development issues.

### **First on methodology**

There is now a series of bodies involved in RTD related activities:

- The High Level Political Forum of the 2030 Action Agenda
- The Inter Agency and Expert Group on SDG Indicators
- The Working Group on the Right to Development
- The Special Rapporteur on the right to development whose terms of reference emphasise the need to avoid duplication

It would make sense for the Special Rapporteur to attend the meetings of the High Level Policy Forum of the 2030 Action Agenda as well as of the Ad Hoc Working Group on the Paris Agreement and of the Inter Agency Task Force in Follow-up to the Addis-Ababa Action Agenda.

The purpose of this participation would be to inform a report to the Working Group on the Right to Development, the Human Rights Council and to the General Assembly. The report

would first include proposals for enhancing consistency in the interaction between the right to development and the outcomes of the three seminal document mentioned above. The report could subsequently be expanded to include consistency recommendations with other decisions/resolutions of international development agencies.

The Special Rapporteur would also review the Final List of Proposed Sustainable Development Indicators elaborated this summer by the Inter Agency and Expert Group on Indicators. The purpose of this review would be to determine what impact, if any, these indicators have on the definition of criteria, sub-criteria and standards that are being considered by the Working Group on the Right to Development.

**My second point** is on substance. Without attempting to draw up a list of substantive issues, I will just mention two of them which are a cause for real concern.

The first substantive issue has to do with the elimination of hunger and poverty which is part of basic rights themselves the essence of the right to development.

Goal setting, as Bill Gates told the 2008 UNGA is “the best idea for focussing the world on fighting global poverty I have ever seen”. Goals 1 and 2 commit the international community to ending extreme poverty and hunger by 2030. The need for subsistence and entitlement to food is no other than the right to life, an essential component of the right to development. Yet the backtracking of the international community in honouring its adopted goals on dealing with hunger has been nothing short of scandalous.

Already 14 years before the adoption of the Declaration on the Right to Development, I attended the World Food Conference which in 1974 solemnly announced that hunger would be eradicated within a decade. That did not happen. I also attended twelve years after the adoption of the Declaration, the 1996 World Food Summit which cut back 22 years later, its previous ambition by announcing, not an eradication of hunger but only a reduction by half of the number of undernourished people, that is by about 500 million at the latest by 2015. Moving back 6 years the reference year, the 2000 MDGSs then limited their ambition further by committing to reduce by 2015 not the numbers but only the proportion of hungry people by half. This meant reducing their absolute number by 300 million instead of 500 million. Now the SDGs come back to the initial goal of 1974 of eradicating hunger but 46 years later than the date initially targeted by the international community. There is no death count resulting from this failure to act.

It is suggested that the Working Group concentrate its efforts first on elaborating standards that might really help meet the Goal 2 target and advance the right to food which, like the right to health and to housing, is both vital and likely to enlist consensus support. As for the Special Rapporteur, he might investigate at regular intervals whether there is such a quantum difference between past policies and measures currently being devised particularly under Goal 2 to make it likely that a repetition of the back-peddalling witnessed in the past on eliminating hunger, can be avoided. As shortfalls in such targets are major silent killers, this

mandate holder should sound alarm bells in such cases and activate a process to restore the required momentum.

A second substantive point has to do with trying to contain and ultimately to reverse the growing skewedness in income distribution world-wide, both within and between countries. This is a result of the ideology of globalisation blurring its practicality. The challenge has now become global as epitomized by Brexit, by the recent inconclusive Hungarian referendum on EU quota allocation of asylum seekers and by the rise of xenophobic populism.

It is suggested that the bodies tasked with the follow-up of the three seminal agreements I referred to earlier and the two mechanisms related to the right to development concert strategically on correcting the malfunctioning of globalisation which is causing an ever broader denial of the right to development at world level.

**To conclude:** two concrete suggestion:

1. To fold the right to development into the International Bill of Rights which might be a good compromise. Pending agreement on enshrining the Declaration in an international legally binding covenant, I would endorse the proposal of the Chairman Rapporteur of the Working Group on the Right to Development that implementation of the right to development be included in each country's UPR. I would just add that we also include under a common heading the human rights impact of unilateral coercive measures, if any, applied by the State under review.
2. To get the Working Group started in earnest on standards that are relevant to basic rights such as the right to food, the right to water, the right to health, the right to education the right to housing and gender equality as confidence building measures before fanning out to a larger range of human rights.