

Biennial panel discussion on the right to development

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Statement by Mr. Mihir Kanade, Chair of the Expert Mechanism on the Right to Development

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Your excellencies,

The 35th anniversary of the adoption of the 1986 Declaration on the Right to Development is an opportune moment to take stock of the role that policies at the international and national levels can play in both its realization and in creating obstacles thereto.

While the Declaration itself was adopted with an overwhelming majority of 146 countries voting in its favour, 8 abstaining and only 1 voting against, we must sear into our collective consciousness that the right to development has been reaffirmed thereafter unanimously in almost 25 international instruments and agendas, including in the binding Paris Climate Agreement of 2015. And yet, it remains an unfortunate fact that this right has not yet been effectively operationalized.

This *per force* necessitates a probing inquiry into the reasons why many policies adopted at the international and national levels have impeded its realization and why it remains so difficult to overcome these challenges. And clearly, one of the main reasons is that for over 35 years, the operationalization of this right has been undermined by some normative myths.

The **first myth** is that the right to development is vague or that it tolerates violations of other human rights under the pretext of “development”. False. Article 1(1) of the Declaration clearly stipulates who the rights-holders are – individuals and peoples. It also explicitly emphasizes that the right to development is an inalienable self-standing human right. It is not synonymous with either the human rights-based approach to development or the development-based approach to human rights.

Development itself is a human right. It entails three entitlements – the right to participate in, contribute to, and enjoy development. A denial of any of these three entitlements will be a violation of the right to development. There will be a violation of the right to development if international or national development policies and practices do not reflect the development priorities of the rights-holders; if such policies and practices deny them participation before they are developed and deployed; if such policies and practices exclude the rights-holders from contributing to their own development, for instance, denying country ownership in development cooperation practices, or denying local employment in development projects; or if such policies and practices deny the right to equally enjoy the benefits of development due to discrimination.

Finally, the nature of development entailed is one where all human rights and fundamental freedoms can be fully realized, meaning, that the right to development cannot be advanced if the policy aimed at its realization violates some other human right/s.

The **second myth** is that the obligations for realizing the right to development are solely to be discharged by States internally and that there are no extraterritorial or collective obligations for

States. Alternatively, that the obligations entailed are only extraterritorial or collective, but not internal. Both are false. These arguments are singularly responsible for non-operationalization of the right to development.

There is no doubt that the lack of good governance at the national level, on many occasions, can and does result in non-realization of, or even violation of this right. There must be a major focus on national action, including combating corruption and lack of civic space. However, good governance at the national level is only possible if there is adequate governance space available in the first place. Many policies adopted by other States, individually or through international organizations, continue to limit or even deny this necessary governance and policy space.

For instance, vaccine nationalism policies adopted by many rich countries during the pandemic directly impeded the governance space needed by poorer countries in ensuring access to vaccines for their populations. Additionally, effective waivers on the requirements of the TRIPS agreement at the WTO were blocked for over 20 months, a period when most harm to human life and health occurred, further limiting the governance space needed by poorer countries. These were not instances where these countries did not want to engage in good governance; they had all the interest and willingness in guaranteeing equitable access to vaccines nationally.

Similar examples are quite commonplace – some of the lopsided trade policies at the WTO, conditionalities imposed by the international and regional financial institutions, or predatory development cooperation practices at the bilateral level. States therefore recognized in the 1986 Declaration obligations for the realization of the right to development at three levels – internal, external and collective. This right can be realized only if there is *equal* focus on all these three levels of obligations.

The **third myth** is that the duty of international cooperation enshrined in the 1986 Declaration is at best soft law and that no such binding obligation exists for States. False. The first thematic study of the Expert Mechanism on the right to development has already elaborated upon the normative basis of this duty which is anchored, in fact, in articles 1(3), 2, 55 and 56 of the Charter of the United Nations, which also provides in its article 103 that obligations under the Charter prevail over any other conflicting obligations that States may undertake under other international agreements.

The duty of international cooperation is further explicitly stipulated in the UDHR, the two covenants, other core human rights treaties, as well as customary international law codified in international instruments such as the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.

The **fourth myth** is that the right to development is not really a human right since it is often claimed by States. Again, false. The 1986 Declaration is clear that the rights-holders are always individuals and peoples. However, when a State is unable to discharge its duty to adopt appropriate national developmental policies because of actions by other States or international organizations, that State, as an agent of the rights-holders within its jurisdiction, has the right to demand cessation of such adverse conduct. This does not mean that the right to development is a State right; it always remains a human right of individuals and peoples.

The **fifth myth** is that the duty to cooperate enshrined in the right to development makes the commitment of many developed countries to contribute 0.7% of their GNI as development aid a legally binding obligation. It does not. What it does mean is that when development cooperation is provided, donors do not dictate the sectors for aid allocation, misalign funding with recipient country priorities, undermine recipient country ownership over development programmes, adopt debt enhancing or predatory conditionalities, or condition aid on contracts from donor companies only.

At the same time, if ODA is the principal modality of international cooperation by developed countries, a failure to realize these commitments in one or two instances will not independently constitute an internationally wrongful act. Nevertheless, a repeated failure can cumulatively indicate the failure to abide by the individual and collective duty to cooperate. In other words, development cooperation is not charity; it needs to be implemented through the lens of the duty to cooperate with full respect for the right to development.

Ladies and gentlemen,

Given the history, the best practice moving forward to operationalize the right to development is to adopt and implement the legally binding instrument that is currently being deliberated upon at the Working Group. Policies at the national and international levels need a legally binding foundation which determines their legitimacy based on compliance with the normative principles of the right to development.

We may as well ask the counterfactual. What will happen in the absence of a treaty on the right to development? The answer is clear - business-as-usual. On its 35th anniversary, the Declaration itself may be screaming at us: If the international community wanted business-as-usual, why even bother adopting me? It is time to move beyond the rhetoric and translate the Declaration into a legally binding instrument.

Thank you!