The Impending Threat to the Family Institution and Values Posed by the Draft Covenant on the Right to Development

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What are the real issues of the Right to Development?

1- As is well Known, the Charter of the United Nations is the highest standing document among all the instruments of International Law. The Charter provides in its first article that one of its main objectives is to solve economic, social and cultural issues through international cooperation. The Charter details in its ninth Chapter these questions and the way to address them.

2- Barely two years after the establishment of the UN, the General Assembly adopted the Universal Declaration on Human Rights and in 1966, the International Covenant on Economic, Social and Cultural Rights was adopted simultaneously with the International Covenant for Civil and Political Rights. The three instruments came to represent the **International Bill of Human Rights**

3- The Right to Development then is an extremely important right though it remains one of the rights provided for in the International Covenant on Economic, Social and Cultural Rights, much as the right to food, clean water, appropriate housing and other rights that came into existence based on this Covenant.

4- And this begs the logical and important question: why has the Right to Development commanded such importance to the point that prompted the human rights system in Geneva to propose an independent draft for a third covenant to the General Assembly of the UN to adopt?

To answer this question, we have to address two problems that faced the implementation of the International Covenant of Economic, Social and Cultural Rights and negatively impacted the Right to Development under the general framework of this Covenant; namely, the **equality** of all rights and their treatment on equal footing and the **justiciability** of economic and social rights.

Equality of Rights:

5- For several overlapping and interfering reasons, civil and political rights had the lead over social, cultural and economic rights, to the point of partial neglect of these last three. This prompted the UN on multiple occasions, including the relevant annual resolution of the General Assembly, to reaffirm the equality and interdependence of all human rights. This was also part of the text of UNGA's resolution: 60/251, March 15, 2006 when establishing the new Human Rights Council:

"Reaffirming further that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis".

6- In addition to the **Declaration** on the Right to Development, we should recall that the adoption of the annual resolution of the General Assembly on this right, clearly bolsters the principle of the equality of economic and social rights to civil and political rights.

Justiciability of economic and social rights:

This question remains a subject of continuing debate for seven decades. Despite the fact that this debate resulted in the affirmation that economic and social rights could be adjudicated and enforced by courts, an important sector of states, including the United States, Australia and the United Kingdom, lodged objections on the basis of **(alleged vagueness of rights and the inappropriateness of interreference with governments' decisions about socio-economic policies).**

How were these two questions settled?

7- As far as the equality of rights, the Declaration on the Right to Development, adopted by the UN General Assembly in December 1986, affirmed that **"All human rights and fundamental freedoms are indivisible and interdependent;**

equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights."

8- As for **justiceability** in economic and social rights, an **open-ended working group was established** in Geneva in 2007 to draft an optional protocol based on accepting the principle of justiceability of these rights, taking into consideration, under the optional language of the protocol, the opinions or positions of those countries that expressed doubts vis a vis this principle. This language was conducive to the maintenance of undiminished status and universal acceptance of economic and social rights while giving room for the principle of justiceability, as time passes and in a successful implementation of the principle of progressive development and codification of international law.

9- However, this substantial effort regarding these two important questions was derailed by the manipulation of the draft covenant on the right to development in favor of the inclusion of the sexual agenda and the legalisation of abortion.

<u>The intention behind the new proposed draft covenant</u>:

10- The Resource Guide of FWI says that a wide alliance of UN specialized agencies headed by the International Planned Parental Federation IPPF, had been substantially successful, in its feverish activities since the beginning of the Millenium, in including the sexual agenda and abortion in the work of the human rights system in Geneva through various means, including the exploitation of "**Treaty Body Monitoring Committees**".

11- In this context, article 16 was forcibly introduced into the substance of the draft covenant by inserting a clear reference to Sexual Reproduction Health and Reproductive Rights SRHRR.

12- It now becomes clear that article 16, and other auxiliary articles such as article 26 on the establishment of a Conference of States Parties, are the real aim of this project, shoving it to

the General Assembly in a hurried manner, avoiding any governmental debate through the full membership of the UNGA.

13- The Drafting Experts' Group created obligations in the draft that run counter to national laws and constitutions of UN member states, creating a monitoring mechanism, the Conference of States Parties, to follow up on the commitments of member states to implement the articles of the Covenant. It is extremely important to note that the two Covenants of 1966, along with the Universal Declaration on Human Rights, represent the International Bill on Human Rights and none contains this sexuality reference. As it is noted:
"**The irony is, the language on reproductive health in Article 16 threatens to enshrine abortion rights, homosexual, transgender rights and sexual rights for children in international law. All these issues are Western impositions on the mostly more traditional countries of the Global South**".

Conference of states parties

14- As we have mentioned, article 26 provides for the establishment of this Conference. This article is read in conjunction with articles 13 and 21 that represent the equivalent of Supremacy Clauses in national laws, thereby subjecting other international conventions and national laws in practice to these texts. This is all part of a mobilization of texts in the draft covenant to remove objections to article 16, the sexuality agenda.

15- Since a number of articles in this draft are widely controversial among UN member states, and they lack a legal frame of reference, the draft then is widely open to entering reservations.

16- The mere mention of the establishment of a Conference of States Parties in this draft, to the exclusion of any of the three texts that form the International Bill of Human Rights, reduces these three texts to a lower standing in comparison to this draft.

The consequences of adopting the draft:

17- The annual resolutions of the UNGA on the Right to Development had not included any reference to Sexual Reproductive Health and Reproductive Rights SRHRR thus far. Should the General Assembly adopt the Covenant, as referred by the Geneva Working Group chaired by Mr. Zamir Akram, this would represent the first instance where this phrase found its way into a binding international convention.

18- Despite the fact that Sexual Reproductive Health, SRH, was included in the International Convention on Persons with Disabilities, member states placed a caveat that abortion was not a human right and that the Convention provides for no obligation in such context. In case member states are unable to transform negotiations from the expert level to full governments participation, they should at least replicate their action in the Convention on Persons with Disabilities. Merely stating that national laws of member states do not permit or legalise the sexual and abortion agenda will be useless so long as these affirmations were not part of the body of the Covenant through one of the usual ways. The loaded language used by UN agencies, Special Rapporteurs and treaty bodies monitoring Committees, as well as Western countries in their various programs will provide the legal backing and interpretation of this language if member states do not decisively act:

"**In the absence of a definition or caveats, the meaning of SRHRR will depend on the normative and programmatic guidance of the UN human rights system and UN agencies**".

19- In defining customary international law, The International Law Commission says: (**the implementation of UN resolutions by UN agencies can contribute to the formation of new customary international law. ILC maintains that the silence by member states in international organizations**

will be interpreted as consent to the formation of new customary norms).

<u>Issues that must be taken into account:</u>

20- Article 21 provides that member states of the International Covenant of the Right to Development undertake to review present and potential risks to their national laws, policies, practices and also to review the conduct of their national institutions, any obligations born out of international legal instruments, to ensure **compliance** with the international Covenant of the Right to Development. Member states shall also take into consideration any additional directives or preferential suggestions or recommendations made by the Conference of States Parties. No comment! Article 21 is self explanatory.

21- Since 1996 and as the RG of FWI says, there has been an integrated plan to include the sexuality agenda in the international law of human rights. To make this clearer, let me give you an example of the manipulation and tactics used by the EU in drafting the Partnership Agreement between the EU member states and the group of African, Caribbean and Pacific countries in 2020 (ACP – EU Treaty). These tactics are identical to those employed by the same group in drafting the international Covenant on the Right to Development in the following three points:

First, both documents use development as a gateway and excuse to include sexual agenda.

Second, both documents rely on the SDGs 2030 as a basis for drafting binding agreements. This despite these SDGs forming a purely political document and a plan of action by the UNGA, devised for a limited period.

Third, the sexual agenda is the real goal of both agreements. The ACP-EU Treaty regards human rights that include sexual agenda as an **essential element**, the non-implementation of which triggers immediate counter

measures. (Article 101 (7) of the Treaty). Further, the draft of the international covenant provides for the establishment of mechanisms such as the Conference of the States Parties to monitor implementation of member states of the covenant.

22- **Finally**, the draft covenant transforms the issue of the right to development from an inter-state question primarily concerned with cooperation between developed and developing and least developing countries to an intra-state issue in the first place. This simply means the political pressure applied to developing and least developing countries will abound resulting in an imbalance of equality of rights; in other words, the exact opposite of the original intent.