The 13th session of the Expert Mechanism on the Right to Development

Item 4 of the Provisional Agenda
Implementation of the mandate and programme of work –
Consideration of thematic studies
Conference Room 6, United Nations Headquarters, New York

An interactive chapter-by-chapter discussion on the draft international covenant on the right to development

Thursday 23 April 2026, 10:00 to 13:00

Unofficial transcript of the oral statement by
Mr. Mihir Kanade, Chair and Rapporteur of the Expert Drafting Group

Opening presentation

It is indeed my honour to co-lead, together with Professor Diane Desierto, this panel discussion on the draft International Covenant on the Right to Development, which has been forwarded by the Human Rights Council to the General Assembly for its consideration, negotiation and adoption. This is a milestone moment. As we have been reminded over the last three days, the Declaration on the Right to Development was adopted 40 years ago, and it is time for that Declaration to be transformed into a legally binding instrument.

Before presenting the text of the draft Covenant with my colleague Diane, I would like to add a few points to what Ambassador Akram has already stated regarding the drafting process and the negotiations that took place in Geneva over four iterations, one of which occurred online during the COVID-19 pandemic. In 2019, when the Working Group on the Right to Development was mandated to elaborate and discuss a draft legally binding instrument, a group of five experts was appointed to lead the process. I was mandated to prepare the zero draft, accompanied by a detailed legal commentary explaining the source of each provision. This was essential, as every effort was made to ensure that no new language was created and that all treaty language was drawn from accepted, consensual international texts and instruments.

Before preparing the zero draft, we circulated a questionnaire to all stakeholders, including Member States, civil society organizations, international organizations, United Nations independent experts and academics worldwide. We received extensive responses on how stakeholders envisioned the structure and content of the draft Covenant. Using this input, I prepared the zero draft, which was then reviewed by the four other members of the expert drafting group. We met for three days at United Nations Headquarters in New York to finalize the initial draft, which was then sent to 10 external experts from all regions for their views.

After receiving their comments, we revised the draft and commentary and submitted the final zero draft to Ambassador Akram, who endorsed it, after which it was published and made available to Member States. From that point, we invited comments and suggestions from all Member States. We received numerous written submissions and, during the first session of the Working Group, all comments, both written and oral, were recorded. Member States were given an additional two months to submit further written inputs, which were compiled and published.

This is important because, from the beginning, we adopted an open, transparent, consultative and collaborative approach. After each round of comments, the expert group revised the draft and published an accompanying commentary explaining which suggestions were accepted and which were not, and why. The guiding principle was that suggestions that strengthened the draft were

accepted. This process continued for four full iterations. Each time, the compilation of comments from all stakeholders, the experts' explanations and the updated legal commentary were published.

In October 2023, the Human Rights Council decided to forward the final draft of the legally binding instrument to New York for adoption. Although the Working Group on the Right to Development in Geneva is open-ended and includes all Member States, not only the forty-seven members of the Council, but it also remains a subsidiary body of the Human Rights Council. Legally, therefore, adoption must occur in a body comprising the full membership of the United Nations.

The draft Covenant is characterized by several key features. Every effort was made to base the language of both the preamble and the operative provisions on existing international legal instruments, including human rights treaties and relevant declarations and resolutions adopted by States. Reference was also made to the comments and recommendations of human rights treaty bodies, the jurisprudence of international and regional courts, reports of the International Law Commission, and interpretative guidance provided by experts. As stated during the drafting process: "No concepts, no norms, no rights, and no obligations have been created anew. They are not de novo. They already exist in international law."

The commentaries accompanying the draft Covenant are of particular importance. They have been published, and I encourage all delegates seeking clarification on any provision, or even on a single word, to consult them. The commentaries are comprehensive and trace every element of the text to its source in international law.

Importantly, the final draft of the legally binding instrument is entitled an International Covenant rather than a convention. This is because several resolutions of both the Human Rights Council and the General Assembly have called for the recognition and elevation of the right to development to the same level as civil, political, economic, social, and cultural rights. To reflect this parity, the prevailing view in Geneva was that the instrument should be designated a Covenant, placing it alongside the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Technically, there is no legal distinction between a covenant, a convention, an agreement, a protocol, or an accord. However, the term "Covenant" carries symbolic significance within international human rights law. Should this instrument be adopted, the International Bill of Human Rights would comprise the Universal Declaration of Human Rights and three Covenants, including this Covenant on the Right to Development.

The content and structure of the draft Covenant draw significantly from the Universal Declaration of Human Rights and the nine core human rights treaties. In particular, the draft benefits from the structure of the Convention on the Rights of Persons with Disabilities, including its final provisions.

At the same time, the draft Covenant does not confine itself to a single treaty model. The specific nature of the right to development necessitates drawing on multiple approaches. Accordingly, the draft Covenant draws on the standard human rights treaty model, in which individuals are rights holders and States are duty bearers. It also appropriately incorporates reciprocal inter-State obligations characteristic of status-type treaties. In addition, the draft Covenant borrows significantly from the features of framework conventions, focusing on principles, rights, and general obligations rather than on detailed regulatory provisions, which may subsequently be developed through the Conference of States Parties.

The draft Covenant restates existing norms and principles of international law in the context of the right to development, while establishing a Conference of States Parties to facilitate future normative

development. Unlike the 2030 Agenda for Sustainable Development, the draft Covenant does not establish benchmarks or quantifiable targets, notwithstanding the central role that development occupies within the instrument.

The draft also builds on the 1986 Declaration on the Right to Development. Every effort has been made to adhere to its core content and language, and only those modifications necessary to transform a declaration into a legally binding instrument have been incorporated. The understanding of development and its defining characteristics is set out clearly in the preamble, which my colleague Diane will present shortly. This approach closely follows that of the Declaration on the Right to Development.

The overall framework of the draft Covenant also benefits significantly from the 2010 report of the High-Level Task Force on the Implementation of the Right to Development, in the preparation of which some of you participated. The draft draws upon elements of that report that are widely accepted and non-controversial. While it does not incorporate the highly debated right to development criteria and operational sub-criteria developed by the Task Force, it does adopt the three levels of obligations relating to the realization of the right to development that the Task Force identified.

The first level concerns States acting individually in formulating national development policies and programmes affecting persons within their jurisdictions. This reflects the traditional orientation of human rights obligations, which focus primarily on domestic implementation. All States have obligations to respect, protect and fulfil human rights within their own jurisdictions. However, the Task Force also recognized two additional levels of obligations.

Second, States acting individually when adopting and implementing policies that affect persons beyond their own jurisdictions. A simple example would be unilateral coercive measures: actions taken by one State that adversely affect the right to development and the human rights of persons in other countries. One could also include unilateral trade tariffs that undermine the multilateral trading system of the World Trade Organization and, in my view, constitute another form of unilateral coercive measure.

Third, States acting collectively through global and regional partnerships and institutions, such as the World Trade Organization, the World Bank, and the International Monetary Fund. In such contexts, States should eliminate existing obstacles to the realization of the right to development and foster conditions that enable its full realization. One example, which many of us experienced during the COVID-19 pandemic, was the reluctance of States to agree to even a temporary suspension of certain intellectual property obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) within the World Trade Organization. Such a waiver was agreed only some 20 months later.

These were obstacles to development embedded within the existing international legal framework and maintained through the actions of international institutions. Such obstacles should be removed. At the same time, the draft Covenant adopts the contemporary tripartite typology of human rights obligations: the obligations to respect, protect and fulfil human rights. In addition, the draft reaffirms existing obligations of international organizations and legal persons under international law.

The Covenant is divided into five parts, in addition to the preamble. The preamble follows a logical progression that reflects the evolving development of the right to development leading to the elaboration of the draft Covenant.

Part I contains three introductory provisions addressing the purpose of the Covenant, definitions of specific terms used therein, and the general principles that should guide the implementation of obligations by duty bearers.

Part II focuses on the right to development and its rights holders. The four provisions contained in this part address the content of the right and its relationship with the right to self-determination. The right to development may be understood as the right to self-determined development. This part also addresses the relationship between the right to development and other human rights, as well as the general duty of everyone to respect human rights under international law.

Part III focuses on duties and duty bearers. It does not create new obligations; rather, it reiterates obligations that already exist under international law. It begins with provisions on the general obligations of States Parties and international organizations and then proceeds to address various dimensions of the obligations to respect, protect and fulfil the right to development across the three levels identified by the High-Level Task Force on the Implementation of the Right to Development.

The draft Covenant pays specific attention to the duty to cooperate. It also addresses a number of issues that are particularly relevant to the realization of the right to development, including the prohibition of coercive measures, special and remedial measures, gender equality and the empowerment of women and girls. There has been some misunderstanding regarding this provision, which we would be pleased to clarify further during the discussions. The draft also addresses the situation of Indigenous Peoples and peasants and other people working in rural areas, as well as measures to prevent and combat corruption.

Several of these provisions reflect proposals advanced by important stakeholders, including United Nations entities. The draft further contains provisions relating to international peace and security, the prohibition of limitations, impact assessments, statistics and data collection, sustainable development, and the harmonious interpretation of the Covenant with other international agreements.

Part IV establishes a sui generis implementation mechanism for the draft Covenant through the creation of two institutional bodies. The first is the Conference of States Parties, which, in terminology familiar from international climate change law, may be regarded as the supreme decision-making body of the treaty regime. The second is a subsidiary implementation mechanism composed of independent experts.

Part V contains the final provisions of the Covenant, which follow the standard practice of international human rights treaties.

Second introduction

Article 4 is entitled “The Right to Development” and constitutes the core substantive provision of the treaty. It defines the scope, nature, and content of the right to development.

It provides that every individual and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to, and enjoy civil, cultural, economic, environmental, political and social development, which is indivisible and interdependent and interrelated with all other human rights and fundamental freedoms.

The second paragraph is a particularly important component of this provision. It affirms that every individual and all peoples have the right to active, free, and meaningful participation in development, as well as to the fair distribution of benefits resulting therefrom.

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