

Committee on Economic, Social and Cultural rights and its role in the field of human rights

Ramale Abilova

Master degree student of Human Rights*,
Law Faculty, Baku State University

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SUMMARY

In our modern century there are many problems in the field of human rights. That is why there is a great attention to the human and human rights in the national and international level.

After the II World War was adopted many international documents for defending and supporting all basic human rights. They were Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social and Cultural Rights (ICESCR) and etc.

This article is about Committee on Economic, Social and Cultural Rights that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. In the article is mainly researched of CESCR's role and functions on the activity and impact to the area of human rights.

XÜLASƏ

Müasir dövrimüzdə insan hüquqları sahəsində çoxlu problemlər vardır. Buna görə də, insan və insan hüquqları sahəsinə milli və beynəlxalq səviyyədə böyük diqqət ayrılmışdır.

II Dünya Müharibəsindən sonra əsas insan hüquqlarını müdafiə və dəstəkləmək üçün çoxlu beynəlxalq sənədlər qəbul edildi. Bunlar, Ümumdünya İnsan Hüquqları Bəyan-

naməsi, Mülki və Siyasi Hüquqlar haqqında Beynəlxalq Pakt, İqtisadi, Sosial və Mədəni Hüquqlar haqqında Beynəlxalq Pakt və s.-dir.

Məqalə, tərəf olan dövlətlər tərəfindən İqtisadi, Sosial və Mədəni hüquqların həyata keçirilməsinə nəzarət edən İqtisadi, Sosial və Mədəni hüquqlar Komitəsi haqqındadır. Məqalədə, əsasən, İqtisadi, Sosial və Mədəni hüquqlar Komitəsinin insan hüquqları sahəsində göstərdiyi fəaliyyətin və təsirin rolu və funksiyaları araşdırılıb.

Human Rights are the rights which you have simply because you are human.

On October 24, 1945, in the aftermath of World War II, the United Nations came into being as an intergovernmental organization, with the purpose of saving future generations from the devastation of international conflict.

The Charter of the United Nations established six principal bodies, including the General Assembly, the Security Council, the International Court of Justice, and in relation to human rights, an Economic and Social Council (ECOSOC).

The UN Charter empowered ECOSOC to establish "commissions in economic and social fields and for the promotion of human rights...". One of these was the United Nations Human Rights Commission, which, under the chairmanship of Eleanor Roosevelt, saw to the creation of the Universal Declaration of Human Rights.

The Declaration was drafted by representatives of all regions of the world and encompassed all legal traditions. Formally adopted by the United Nations on December 10, 1948, it is the most universal human rights document

in existence, delineating the thirty fundamental rights that form the basis for a democratic society.

Following this historic act, the Assembly called upon all Member Countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.”

Today, the Declaration is a living document that has been accepted as a contract between a government and its people throughout the world. According to the Guinness Book of World Records, it is the most translated document in the world.

In its preamble and in Article 1, the Declaration unequivocally proclaims the inherent rights of all human beings: “Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people... All human beings are born free and equal in dignity and rights.”

The Member States of the United Nations pledged to work together to promote the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. In consequence, many of these rights, in various forms, are today part of the constitutional laws of democratic nations.

One of the main bodies of UN called ECOSOC. The UN Charter established ECOSOC in 1945 as one of the six main organs of the United Nations. The Economic and Social Council is at the heart of the United Nations system to advance the three dimensions of sustainable development – economic, social and environmental.

According to Article 16 of the International Covenant on Economic, Social and Cultural Rights, the Economic and Social Council (ECOSOC) is assigned the task of monitoring the realisation of its rights. Nine years after the entry into force of the covenant ECOSOC created a Committee on Economic, Social and Cultural Rights (CESCR) that is a recreation of other treaty monitoring bodies. The CESCR

is, contrary to other treaty-based bodies, still under the authority of the ECOSOC.

Understanding of what are economic, social and cultural rights may even have contributed to a greater alertness on the part of those who are not willing to place economic, social and cultural rights high (or even at all) on the international and national agendas. One example is the case of the UN Special Rapporteur mechanism regarding the right to adequate housing. In the early 1990s, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities appointed Justice Rajindar Sachar as Special Rapporteur on the right to adequate housing. Justice Sachar produced four important papers that contributed significantly to clarifying the content of the right to housing. During approximately the same period (1991-1997), the CESCR adopted two General Comments (Numbers 4 and 7) on the right to housing as enshrined in Article 11 of the ICESCR, with particular focus on forced evictions. Efforts were made to place the right to housing on the agenda of the Commission on Human Rights, the primary UN political body addressing human rights. These efforts were successful in that the Commission acknowledged the work done by the Sub-Commission, and decided in 2000 to mandate and appoint its own Special Rapporteur on housing as a component of the right to an adequate standard of living. A qualifier to this success is that the resolution does not speak of the “right to housing,” but “adequate housing as a component of the right to an adequate standard of living.” Although this seems a minor detail, from a strictly legal perspective it could suggest a retrogressive move away from the full recognition of housing as a human right. This concern is in part reflected in the Special Rapporteur’s 2002 report to the Commission, which addresses the issue of housing as a distinct human right and which devotes attention to his efforts to keep housing rights on the agenda of major international events relevant to the right to housing.

Another example of such qualified advancement is the discussion surrounding the draft Optional Protocol to the ICESCR, which would provide for a complaints procedure for individuals and groups concerning alleged violations of economic, social and cultural rights. Having been the subject of a protracted process in the Committee, and then having languished on the

shelves of the Commission on Human Rights for several years, some progress seemed to have been made with the appointment of an independent expert on the subject of the draft Optional Protocol to the ICESCR in 2000. Further advancement was seen in the adoption of Commission on Human Rights resolution 2001/30, aiming to establish an open-ended working group to study this matter further. The latest development is cautiously positive, as the Commission on Human Rights, in resolution 2003/18, decided to establish an open-ended working group with a view to considering options regarding the elaboration of an Optional Protocol to the Covenant. This working group will meet prior to the 60th session of the Commission on Human Rights. The matter is far from resolved, however, as forces antagonistic to the notion of economic, social and cultural rights as human rights continue their efforts to oppose a complaints procedure for economic, social and cultural rights, and it may take some time before any concrete move is taken towards the actual adoption of an Optional Protocol.

What is clear is that advances in thinking on and understanding of the status, scope and contents of economic, social and cultural rights, as well as their implications for States, trickle down slowly and erratically in the UN system. As with everything, and in particular the international arena, a large dose of chance, political trade-offs and other, more arcane factors are involved in this process. Ultimately, individual experts, who enter the UN system as Special Rapporteurs and individual treaty body members, and who have human rights experience and knowledge, are instrumental in advancing within the UN system a deeper and more nuanced understanding about economic, social and cultural rights, which is developed externally.

A third example is the issue of justiciability, which continues to be the subject of extensive debate, and not necessarily always in a fruitful manner. The term “justiciability” is generally understood to refer to a right’s faculty to be subjected to the scrutiny of a court of law or another (quasi-) judicial entity. A right is said to be justiciable when a judge can consider this right in a concrete

set of circumstances and when this consideration can result in the further determination of this right’s significance. Considerable analysis of the question of justiciability has been produced by the CESCR. However, judging from the comments of States in response to Commission on Human Rights resolutions on the Committee’s proposals on a draft optional protocol, and despite support from various other authoritative parties, such as scholars, UN Special Rapporteurs and nongovernmental organizations, this analysis has not been wholly convincing. States continue to express doubts as to whether an international treaty body is in a position to consider the application of economic, social and cultural rights at the domestic level in a manner beyond the relatively general review of State reports. Similarly, the reports of the Independent Expert on the draft Optional Protocol to the ICESCR are not reflective of the analysis and arguments concerning justiciability that have been fine-tuned over the years

CESCR deals with the issues under the economic, social and cultural facts. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

The Committee publishes its interpretation of the provisions of the Covenant, known as general comments.

The Committee on Economic, Social and Cultural Rights is composed of 18 independent experts - persons of high moral character and recognized competence in the field of human rights. Nominations for membership on the Committee may be made by States parties to the International Covenant on Economic, Social and Cultural Rights, in accordance with Resolution 1985/17 of the Economic and Social Council (ECOSOC) of 28 May 1985. Members are elected for a term of four years by ECOSOC Member States. Committee Members serve in their personal capacity and may be re-elected if nominated.

In accordance with ECOSOC Resolution 1985/17 (paragraph (b)), in regard to the composition of the Committee, due consideration

must be given to equitable geographical distribution and to the representation of different forms of social and legal systems.

The CESCR holds two sessions per year: a three-week plenary session and a one-week pre-sessional working group in Geneva, Switzerland. The schedule of past and upcoming CESCR sessions is available online, and the OHCHR maintains a Master Calendar of all UN Member States' upcoming treaty body reviews.

Initially, a State must make a report on its implementation two years after acceding to the ICESCR. Following the initial report, periodic reports are then requested every five years thereafter. The reporting system requires each State party to submit (1) a common core document, which lists general information about the reporting State, a framework for protecting human rights, and information on non-discrimination and equality, and (2) a treaty-specific document, which accounts for specific information relating to the implementation of articles 1 to 15 of the ICESCR and any national law or policies taken to implement the ICESCR. For more specific guidance regarding the form and content of reports, the UN Secretary General has published a *Compilation of Guidelines on the Form and Content of Reports to be Submitted by State Parties to the International Human Rights Treaties*. The Office of the High Commissioner of Human Rights also maintains a list of all the State party reports.

After States submit their reports, the CESCR initially reviews the report through a five-person pre-sessional working group that meets six months prior to the report being considered by the full Committee. The pre-sessional working group will then issue a list of written questions to the State party, and the State party will be required to answer prior to making their scheduled appearance before the Committee.

Representatives of each reporting State are invited to engage in a constructive dialogue with the CESCR. Concluding observations are then drafted and later adopted by consensus following a private discussion by the Committee. A list of concluding observations can be found on the Office of the High Commissioner of Human Rights' website

page.

The CESCR may, in its concluding observations, also make a specific request to a State party to provide more information or statistical data prior to the date on which the State party's next periodic is due. However, this is a rarely used procedure. If the CESCR is unable to obtain the information it requires, the CESCR may request that the State party accept a technical assistance mission consisting of one or two Committee members. If the State party does not accept the proposed technical assistance mission, the CESCR may then make recommendations to the Economic and Social Council.

The CESCR may consider individual complaints that allege a violation of one or more rights protected under the ICESCR if the State responsible is a party to the First Optional Protocol to the ICESCR.

The CESCR is authorized to accept individual complaints as of May 5, 2013, provided the complaint meets the requirements identified in articles 1 through 4 of the Optional Protocol are met. Fourteen States have ratified the Optional Protocol, as of June 2014.

Article 10 of the Optional Protocol to the ICESCR provides a mechanism for States to complain about violations of the ICCPR made by another State. This procedure for inter-State complaints, however, has never been used.

The CESCR does not have a mechanism in place for urgent interventions.

The CESCR can also consider inquiries on grave or systematic violations of any of the rights set forth in the ICESCR. State parties may opt out of the inquiry procedure at any time by declaring that the State does not recognize the competence of the Committee to undertake inquiries.

The inquiry procedure is confidential and the State party's cooperation is sought at all stages. Generally, the inquiry procedure proceeds in five steps:

- The Committee receives information that the rights contained in the ICESCR are being systematically violated by the State party.
- The Committee invites the State party to submit relevant observations.
- Based on the relevant submissions and observations, the Committee may then designate one or more of its members to conduct an inquiry and then submit an urgent report to the

Committee. With the State party's consent, the initial inquiry may involve a visit to the State's territory.

- The Committee examines the report and then transmits any findings, along with comments and recommendations to the State party.

The State party is then requested to submit its own observations and any measures it took regarding the Committee's findings, comments, and recommendations within a specified time period.

The CESCR also prepares general comments interpreting the ICESCR's articles and provisions in order to assist State parties in fulfilling their obligations. Each general comment focuses on one specific article of the ICESCR and can be found published in a list on the CESCR's website.

The CESCR adopts statements to clarify its position with respect to certain obligations under the ICESCR following major developments and other issues regarding its implementation. The CESCR also sends letters to State parties addressing ICESCR commitments. All relevant substantive statements and letters can be found maintained in a list by the Committee.

The CESCR regularly devotes one day of its general sessions to discuss either a particular right or a particular aspect of the ICESCR. The goal of the Committee's general discussion days is: (1) to assist the Committee in developing a great depth of relevant issues, (2) to encourage input from relevant and interested parties, and (3) to pave the way for future general comments by the Committee. For more information, the Committee summarizes its general discussion days in a table format by year and title on its website.

NGOs or other civil society stakeholders are encouraged to provide parallel submissions to State reports to the CESCR. All submissions should either be submitted in English, French, or Spanish. It is also recommended to send a report or summary of the report in English, as the UN Secretariat does not translate any reports. Any submission should be transmitted electronically to the CESCR's Secretariat, at cescr@ohchr.org, a month and a half prior to the beginning of the session for which a State will be examined at a general session, and two

months prior to the beginning of a pre-session working group for States who upon a list of issues will be adopted. 20 hard copies will be requested for the general session, and 12 hard copies for the pre-session working group.

The CESCR also makes available a short period of time at the beginning of each pre-session working group and general sessions to receive oral information provided by NGOs. Such information should be: (1) focused specifically on provisions of the ICESCR, (2) directly relevant to issues under consideration by the Committee, (3) reliable, and (4) not abusive.

Additionally, the CESCR has adopted General Comment No. 10, which comments upon the role of national human rights institutions in the protection of economic, social, and cultural rights.

References:

1. See the Human Rights Website, on International Human Rights law: <http://www.humanrights.com/what-are-human-rights/international-human-rights-law/>
2. UN Doc. E/CN.4/2002/59, 1 March 2002, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari to the 58th session of the Commission on Human Rights.
3. The intention to establish a working group was confirmed in resolution 2002/24, paragraph 9(f), in which the Commission on Human Rights decided to "to establish, at its fifty-ninth session, an open-ended working group of the Commission with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights [...]"
4. CHR resolution 2003/18, paras 12-13.
5. See for example the reports of Ms. Katarina Tomaševski., Special Rapporteur on the right to education, UN Docs. E/CN.4/2003/9 (with Add.1 and Add.2), E/CN.4/2002/60 (with Add.1 and Add.2), and E/CN.4/2001/52.
6. See for example K. Arambulo, Strengthening the supervision of the International Covenant on Economic, Social and Cultural Rights-Theoretical and procedural aspects (Intersentia- Hart, Antwerpen/Groningen/Oxford,

1999): 55.

7. See, inter alia, GC 3, submission to the PrepCom of the 1993 Vienna World Conference on Human Rights, A/CONF.157/PC/65/Add.5.

8. See the OHCHR Website, CESCR's monitoring on the economic, social and cultural rights: <http://www.ohchr.org/EN/HR-Bodies/CESCR/Pages/CESCRIntro.aspx>

9. See the OHCHR Website, on CE-

SCR's elections: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/Elections.aspx>

10. See Other Activities of the Human Rights Treaty Bodies and Participation of Stakeholders in the Human Rights Treaty Body Process, UN Doc. HRI/MC/2013/3, 22 April 2013, para. 8.

11. See Optional Protocol to the ICESCR, art. 11(8).

12. See CESCR, Fact Sheet No. 16 (rev.1)

