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Prioritisation of the Protection of Economic, Social and Cultural Rights: A *Sine Qua Non* For Achieving a Holistic Human Rights Protection

Akinbola Bukola Ruth*

Abstract

The implementation of economic, social and cultural rights (ESCR) has been a subject of much legal discourse and continues to attract attention, indicating that the last has not been heard about it. The ESCR are substantially provided for in the International Covenant on Economic, Social and Cultural Rights (ICESCR), a highly comprehensive instrument, solely committed to the implementation and enjoyment of the ESCR at the international level. ESCRs are also protected in parts of other relevant international, regional and municipal instruments. The ICESCR has been ratified and domesticated by many states against suppositions that states might not want to ratify and domesticate it due to the broad and vague terms used in formulating the rights, and the reasoning that its implementation would be costly for States. Using the analysis of the existing conceptual framework research method, this article argued that ESCRs are not in any way less important than the CPRs. It considered the background of ESCR from the history of international human rights, the common genesis of the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR. It discussed the similarities and differences between the two key instruments, and found that, although states generally still accord more priority to the protection of the rights in the ICCPR within the context of municipal laws, the two sets of rights are interdependent, interrelated, and indivisible. The article concluded that the two sets of rights are

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equally important and the implementation of the ESCR is *a sine qua non* for a meaningful realisation of the civil and political rights (CPR). It recommended that the two sets of rights should be accorded equal importance in all ramifications for a holistic protection of human rights.

Introduction

As far back as 1950, the General Assembly of the United Nations recognised the inseparable nature of the relationship between the rights considered civil and political rights (CPR) on one the hand and the economic, social and cultural rights (ESCR) on the other hand, when it declared that "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent"¹. These rights and even many other socio-economic rights have been codified under the International Covenant on Economic, Social and Cultural Rights² and thus forming an integral part of the internationally-recognised manual of human rights.

Apart from the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognition of ESCR can be found under other international human rights instruments, including the Universal Declaration On Human Rights³, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴, the Convention on the Elimination of All Forms of Racial Discrimination⁵, and the Convention on the Rights of the Child (CRC)⁶. The rights have also been recognised and provided for in regional human rights regimes and have been provided for by appropriate regional instruments⁷. At national levels, there have been

¹ United Nations General Assembly Resolution 421 (V), sect. E.

² The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and which came into force from 3 January 1976. The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

³ Article 22-28 of the Universal Declaration of Human Rights, 1948.

⁴ Article 1, CEDAW.

⁵ Article 5, Convention on the Elimination of All Forms of Racial Discrimination.

⁶ Articles 24, 26,27,28,30 and 31 CRC.

⁷ Such as the African Charter on Human and Peoples Right and the European Social Charter.

appreciable levels of both recognition and legal provisions for socio-economic rights. The priority accorded to the rights however varies from one jurisdiction to another. While in some countries, socio-economic rights have been made enforceable rights under the constitution⁸, others only include the rights in their constitutions as directive principles of state policy, thereby making them ordinarily unenforceable⁹. In Nigeria for instance, though not ordinarily justiciable, ESCR are enforced by means like through other legislations which provide for specific rights as enforceable, through the provisions in the Fundamental Human Rights Enforcement Rules Procedure Rules and judicial activism in the interpretation of certain statutes¹⁰, notwithstanding the provisions of section 6(6)(c) of the CFRN 1999.

This article aims at critically examining the importance of the protection of ESCR. It traces the development of international human rights (an aspect of international law) for the protection of civil and political rights and the economic, social and cultural rights, and sought to find out whether they are to be equally protected or treated as one being more important than the other. It is divided into six parts, comprising the introduction, after which it discusses the development of human rights as an aspect of international law in the second part, while the third part examines the distillation of economic, social and cultural rights, the fourth part focuses on the significance of protecting the ESCR as well as deals with the relationship between ESCR and CPR. The fifth part concludes and recommends that both civil and political rights as well as economic, social and cultural rights are equally important to the realisation of a holistic protection of human rights, in view of their shared attributes including universality,

⁸ The Constitution of South Africa.

⁹ The Constitution of the Federal Republic of Nigeria, 1999 (as amended) for instance, especially at section 6(6)(c).

¹⁰ See the case of Jonathan Gbemre & ors. v Shell Petroleum Development Company (Unreported Suit NoFHC/B/CS/53/05, 14 November 2005 and also at the Federal High Court, Benin, Nigeria), where it was held that the pollution of the environment by gas flaring, was an infringement on the right to life and also at the African Court Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others (2005) AHRLR 151 (NgHC 2005).

interrelatedness, interdependence, and indivisibility. It recommends that both sets of rights should be implemented with equal devotion.

Development of human rights as an aspect of international law

International human rights law is an aspect of international law. By nature, international law is the law of states and states are also its primary subjects. International law has generally been seen as the law that governs the relations between independent and sovereign States¹¹. It concerns itself primarily with the relations among States and they are predominantly its subjects. International law however has evolved and now recognises individuals and international organisations howbeit in a limited sense while it accords recognition to States as its dominant subject that retains the exclusive position in the creation of norms of international law¹². Accordingly, the powers of enforcement actions do not depend on a breach of the law, but only on the consent of State parties that there is “a threat to the peace, breach of the peace or act of aggression”¹³. A further pointer to the prominent position of States is also that where there is a dispute between two or more States, parties have to consent to the jurisdiction of the International Criminal Court of Justice before it can exercise jurisdiction over such states.

An examination of the nature of international law and its sources is important for the understanding of the relationship between human rights and international law, human rights being a part of international law. Consequently, they share some attributes. The nature of international law differs in several regards from that of national legal systems. While a domestic legal system is characterised by a parliament or legislature (to enact laws for the State), a judiciary (to interpret the laws, try and award judgment against violators of the law) and an executive (to implement the law or decisions of the legislature), international law does not have such characteristics. Apart from limited exceptions, the General Assembly Resolutions are

¹¹ Rehman Javaid, 2010. International Human Rights Law, 2nd ed., London, Pearson Education Ltd. p 17.

¹² Rahman Javaid, 2010. Ibid.

¹³ Hart's Introduction and commentary in Hart (ed.), Austin: The province of jurisprudence determined, and the uses of the study of jurisprudence (Weidenfeld & Nicholson), 1954) pp.134-142.

generally recommendatory by nature and they are not binding upon member-States in the same way a national legislation would bind an individual or a group in the context of a national legal system. Furthermore, the executive roles of the Security Council are "circumscribed both 'legally and politically'."¹⁴

The international human rights law was created immediately following World War II in response to widespread atrocities committed by states against innocent civilians¹⁵. Human rights law brought a new dimension to international relations by establishing binding legal duties owed by governments to individuals and groups instead of to other governments. International law originally concerns itself with the relationships between and among countries and not individuals. In terms of its purpose, human rights law was to provide protection to all human beings, regardless of their race, religion, sex or other differences. The Universal Declaration of Human Rights (UDHR) was the founding document of international human rights law. It was then unanimously ratified by the UN General Assembly in 1948¹⁶. By recognising the interdependence and indivisibility of all human rights, the Universal Declaration founded the fundamental vision and principles of the new human rights regime, under which people were guaranteed civil and political freedom through the human rights to life, physical integrity, free speech and belief, and due process of law alongside economic and social wellbeing through the human rights to an adequate standard of living, housing, work, education, food and health.

Thus, the inception of international human rights law is generally related to the developments that took place at the end of the Second World War. After that war, the United Nations was established to "*save succeeding generations from the scourge of war...and to*

¹⁴ Malanczuk, Akhurst's Introduction to international Law (Routledge), 1997) p.3 in Rahman Javaid, Ibid.

¹⁵ See, generally, Henkin, The Age of Rights (New York: Columbia University Press, 1990); Cassese, Human Rights in a Changing World (Cambridge, England: Polity, 1990).

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217A of 10 December 1948, UN Doc. A/810 (1948).

reaffirm faith in fundamental human rights"¹⁷ The United Nations Charter,¹⁸ which represents the constitution of the organisation is also an international treaty, the provisions of which bind all states that are parties to the treaty¹⁹.

The Charter also delegates authority to the Economic and Social Council (ECOSOC) to initiate studies and reports in relation to "international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned"²⁰. According to Article 62(2), the ECOSOC "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all".

Distillation of economic and social rights

There are various historical accounts of the development of Economic and Social Rights (ESR) which were the foundation for what became Economic, Social and Cultural Rights (ESCR). Generally, however, there are similarities in the accounts, in terms of the formative years. In terms of its sources, religion has influenced ESR development, especially "liberation theology" which sought to build on "preferential option for the poor"²¹. Alston and Goodman opine that virtually all the major religions show comparable concern for the poor and oppressed²².

¹⁷ Preamble of the United Nations Charter (1945).

¹⁸ 26 June 1945, 59 Stat. 1031 T. S. 993, 3 Bevens 1153.

¹⁹ The substantive provisions of the Charter also bind non-state parties in general international law. See Sands and Klein, *Bowett's Law of International Institutions* (Sweet & Maxwell, 2001) P. 24. Professor White regards the Charter as not simply an inter-state agreement but representing transcendental public law, with the laws produced by the organisation having "applicability (and binding) both institutions and States, depending upon the nature of the activities undertaken" White, 'The Applicability of Economic and Social Rights to the UN Security Council' in Baderin and McCorquodale (eds) *Economic Social and Cultural Rights in action* (Oxford University Press 2007) pp. 89 – 107, at p. 94

²⁰ Article 62(1).

²¹ Alston and Goodman, 2012. *Op.cit.* at p. 279.

²² *Ibid*, 279.

Other sources are philosophical analyses and political theory from authors like Thomas Paine, Karl Marx, Immanuel Kant, and John Rawls, the political Programmes of the 19th century Fabian socialists in Britain, Chancellor Bismarck in Germany (who introduced social insurance scheme in the 1880s) and the New Dealers in the United States; and constitutional precedents such as the Mexican Constitution of 1917, the first and subsequent Soviet Constitutions, and the 1919 Constitution of the Weimar Republic (embodying the *Wohlfahrtsstaat* concept)²³.

Between the world wars, the International Labour Organisation (ILO) adopted international minimum standards to regulate a wide range of matters that now fall under the heading of ESR. These included conventions that hinged on freedom of association and the right to organise trade unions, forced labour, minimum working age, hours of work, weekly rest, sickness protection, accident insurance, invalidity and old-age insurance, and freedom from discrimination in employment²⁴. The need for social protection of those who were unemployed gained emphasis by the Great Depression of the early 1930s and full employment policies such as those advocated by Keynes in his *General theory of Employment interest and Money* (1936) received strong incentive.

Consequent partly upon the above developments, various proposals were made during the drafting of the UN Charter for the inclusion of provisions enshrining the maintenance of "full employment" as a commitment to be undertaken by member-states. Although the proposal was well-supported, the United States of America was opposed to it because it believed that such undertaking would involve interference in its domestic, economic and political affairs. However, there was agreement on article 55(a) of the United Nations Charter which similarly provides that the United Nations shall promote "higher standards of living, full employment, and conditions of economic and social progress and development" but it does not call for specific follow-up at the international level, thereby leaving each party to implement the obligation at their State level without

²³ Ibid, 279.

²⁴ Ibid, 279.

accounting to the international body²⁵. The opposition by the US to the inclusion of the proposed provision for “full employment” did not signify the rejection of ESR *per se*. In 1941, President Roosevelt had nominated “freedom from want” as one of the four freedoms that should characterise the future world order. He spelled out this vision in his 1944 State of the Union address:

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men. ‘People who are out of job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted so to speak a second bill of rights, under which a new basis of security and prosperity can be established for all – regardless of station, race, or creed²⁶.

At the international level, the Universal Declaration of Human Rights of 1948 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 (which came into force in 1976), established the Economic, Social and Cultural Rights (ESCR) and it was highly welcomed by states. The wide acceptance of the ICESCR is such that it has been ratified by at least 160 States. Since the ICESCR is the embodiment of provisions for the protection of the ESCR, which has always been intended to be treated with equal importance with the CPRs, a study of the relationship between the two covenants is important at this point.

Over the past 50 years, ESCR have been elaborated through a wide range of international treaties, laws, and principles, despite being neglected in practice²⁷. Of primary importance is the 1966

²⁵ Ibid, 279 – 280.

²⁶ Eleventh Annual Message to Congress (11 Jan. 1944) in J. Israel (ed). *The State of the Union Messages of the President* (1966). Vol., 3 at 2881. See generally Cass Sunstein, *The Second Bill of rights ESR’s Unfinished Revolution*.

²⁷ See Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press., 1995); Leckie, “Another Step Towards Indivisibility: Violations of Economic, Social

International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by 160 states to date²⁸. Apart from the ICESCR, ESCR have been recognised in all major international treaties protecting the human rights of vulnerable groups, including the Convention on the Rights of the Child²⁹, the Convention on the Elimination of All Forms of Discrimination Against Women³⁰, and the Convention on the Elimination of All Forms of Racial Discrimination,³¹ as well as various treaties of the International Labour Organisation.

ESCR have also been affirmed at the world conferences in Rio (on Development and Environment), Vienna (on Human Rights), Copenhagen (on Social Development), and Rome (on Food Security). Finally, ESCR have been incorporated into regional law through organisations such as the African Union, European Union as well as the domestic laws of many countries in the form of constitutional rights and national/local legislation³². The international law on ESCR provides legal, political, and moral framework to challenge policies that perpetuate poverty and inequality. Just as governments are accountable under human rights law for denying political freedom, so too they are accountable for denying adequate food or health care. ESCR also provides a framework for people to participate in claiming their own rights. This enables affected communities to hold their governments accountable for the progressive realisation of provisions of the ESCRs. The ICESCR deserves a more detailed attention here in view of its centrality as the foremost covenant on ESCRs.

and Cultural Rights" in *Human Rights Quarterly*, vol 20, no. 1, 1998, pp. 81-124, Eide, "Economic, Social and Cultural Rights as Human Rights" in Eide, Krause and Rosas, eds., *Economic, Social and Cultural Rights: A Textbook*, (Netherlands: Kluwer Academic Publishers, 1995).

²⁸ International Covenant on Economic, Social and Cultural Rights, UN Doc. A/RES/2200 A (XXI), (1966).

²⁹ Convention on the Rights of the Child, UN Doc. A/RES/44/736 (1989).

³⁰ Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. A/RES/34/180 (1979).

³¹ Convention for the Elimination of All Forms of Racial Discrimination, UN Doc. A/RES/2106 A (XX) (1965).

³² Leckie, "Another Step Towards Indivisibility: Violations of Economic, Social and Cultural Rights" in *Human Rights Quarterly*, vol. 20, no. 1, 1998, pp. 81-124.

Objectives of the ICESCR

The objectives of the ICESCR is to ensure the protection of economic, social and cultural rights including the right to self-determination of all peoples (Article 1); the right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2); the equal right of men and women to enjoy the rights in the ICESCR (Article 3); the right to work (articles 6–7); the right to form and join trade unions (Article 8); the right to social security (Article 9); protection and assistance to the family (Article 10); the right to an adequate standard of living (Article 11); the right to health (Article 12); the right to education (Articles 13–14); and the right to cultural freedoms (Article 15). It is notable that on the authority of Article 4, states parties may, in certain circumstances, limit some rights enshrined in the Covenant, even though such limitations must be determined by law and must be compatible with the nature of the rights included in the Convention. Such limitations must also be imposed only to promote the general welfare in a democratic society.

Components of the ICESCR

According to the Office of the UN High Commissioner for Human Rights,³³ economic, social and cultural rights are those human rights that relate to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education. While acknowledging that economic, social and cultural rights may be expressed differently from country to country or from one instrument to another, the Office of the UN High Commissioner for Human Rights provided a basic list of what constitutes economic, social and cultural rights clearly as follow:

- i) Workers' rights, including freedom from forced labour, the rights to decide freely to accept or choose work, to fair wages and equal pay for equal work, to leisure and reasonable limitation of working hours, to safe and healthy working conditions, to join and form trade unions, and to strike;

³³ Office of the UN High Commissioner for Human Rights, Frequently Asked Questions on Economic, Social and Cultural Rights, Factsheet No. 33.

- ii) The right to social security and social protection, including the right not to be denied social security coverage arbitrarily or unreasonably, and the right to equal enjoyment of adequate protection in the event of unemployment, sickness, old age or other lack of livelihood in circumstances beyond one's control;
- iii) Protection of and assistance to the family, including the rights to marriage by free consent, to maternity and paternity protection, and to protection of children from economic and social exploitation;
- iv) The right to an adequate standard of living, including the rights to food and to be free from hunger, to adequate housing, to water and to clothing;
- v) The right to health, including the right to access to health facilities, goods and services, to healthy occupational and environmental conditions, and protection against epidemic diseases, and rights relevant to sexual and reproductive health;
- vi) The right to education, including the right to free and compulsory primary education and to available and accessible secondary and higher education, progressively made free of charge; and the liberty of parents to choose schools for their children;
- vii) Cultural rights, including the right to participate in cultural life and to share in and benefit from scientific advancement, and protection of authors' moral and material interests from scientific, literary or artistic production³⁴.

The Office of the UN High Commissioner further reaffirmed that socio-economic rights are human rights and encompass dual freedoms, namely freedom from the State and freedom through the State. For instance, the right to adequate housing encapsulates a right to be free from forced evictions carried out by State agents (freedom from the State) as well as a right to receive assistance to access adequate housing in certain situations (freedom through the State)³⁵.

³⁴ Ibid.

³⁵ Ibid.

Significance of protecting ESCRs

The significance of ESCRs has been underscored by the statement of the High Commissioner for Human Rights when he stated:

The importance of economic, social and cultural rights cannot be overstated. Poverty and exclusion lie behind many of the security threats that we continue to face both within and across borders and can thus place at risk the promotion and protection of all human rights. Even in the most prosperous economies, poverty and gross inequalities persist and many individuals and groups live under conditions that amount to a denial of economic, social, civil, political and cultural human rights. Social and economic inequalities affect access to public life and to justice. Globalization has generated higher rates of economic growth, but too many of its benefits have been enjoyed unequally, within and across different societies. Such fundamental challenges to human security require action at home as well as international cooperation.³⁶

ESCRs have not received the same level of attention and implementation as the civil and political rights (CPR). Comparatively, there has been more emphasis on the importance of the civil and political rights (CPR) while neglecting the socio-economic rights. Failure to protect ESCRs can have very serious consequences according to the Office of the High Commissioner for Human Rights, which highlighted some instances of possible repercussions thus:

1. The denial of economic, social and cultural rights can have devastating effects. Forced displacement or eviction can result in homelessness, the loss of livelihood and the destruction of social networks, and have devastating psychological effects. Malnutrition has a clear health impact, particularly on children under 5; it affects all their organs for life, including their

³⁶ Louise Arbour, United Nations High Commissioner for Human Rights (Geneva, 14 January 2005).

developing brain, liver and heart, as well as their immune system.

2. Denying economic, social and cultural rights can affect large numbers of people. For example, diarrhoeal dehydration caused by a lack of safe drinking water claims the lives of nearly 2 million children every year and has killed more children in the past 10 years than all the people lost to armed conflict since the Second World War.

3. Gross violations of economic, social and cultural rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine the recovery from conflict. For example, discriminating in access to employment, using education as a tool for propaganda, forcibly evicting communities from their homes, withholding food aid from political opponents and poisoning water sources are all abuses of economic, social and cultural rights that have fed conflict in the past.

4. The denial of economic, social and cultural rights can lead to violations of other human rights. For example, it is often harder for individuals who cannot read and write to find work, to take part in political activity or to exercise their freedom of expression. Failing to protect a woman's right to adequate housing (such as lack of secure tenure) can make her more vulnerable to domestic violence, as she might have to choose between remaining in an abusive relationship or becoming homeless³⁷.

Notwithstanding the importance the ICESCR, the Committee on Economic, Social and Cultural Rights has observed in a statement to the World Conference on Human Rights in Vienna, that protection of

³⁷ Office of the United Nations High Commissioner for Human Rights, Fact sheet 33, Frequently Asked Questions on Economic, Social and Cultural Rights under the Heading: Why is protecting economic, social and cultural rights important?

economic, social and cultural rights is not always given sufficient priority³⁸.

Relationship between ESCR and CPR

The relationship between ESCR and other groups of rights reflects the universal nature of human rights³⁹ and especially with the CPR. It can be viewed in two ways, namely in terms of their similarities or common attributes, and their differences. They both possess the attributes of being inter-related and interdependent as it is difficult and unrealistic to enjoy one without the other.

Interdependence of the two covenants

The UN has constantly made the interdependence of the CP and ESC groups of rights part of its ideologies. Thus, the UDHR of 1948 includes both groups of rights without any sense of difference or primacy. For instance, the ICESCR took after those used in the ICCPR, when it states that:

In accordance with the Universal Declaration ..., the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights⁴⁰.

Alston and Goodman have observed that the interdependence principles are not only being used as a political compromise between advocates of one or two covenants, but it reverberates the fact that the two sets of rights can neither “logically nor practically” be separated in watertight compartments, civil and political rights may constitute the condition for, and thus be inherent in, ESR. A particular right might fit equally well within either covenant, depending on the purpose for which it is declared⁴¹. They gave some illustrations as follows:

³⁸ A/CONF.157/PC/62/Add.5, annex I, paras. 6–7.

³⁹ Para. 5, Vienna Declaration and Programme of Action.

⁴⁰ The Preamble to the ICESCR

⁴¹ Alston P and Goodman Ryan, 2012. *International Human Rights Text and Materials* (The successor to *International Human Rights in Context: Law, Politics and Morals*) Oxford University Press, p.287.

1. The right to form trade unions is contained in the ICESCR, while the right to freedom of association is recognized in the ICCPR.
2. The ICESCR recognizes various 'liberties' and 'freedoms' in relation to scientific research and creative activity.
3. While the right to education and the parental liberty to choose a child's school are dealt with in the ICESCR (Art, 13), the liberty of parent to choose their child's religious and moral education is recognized in the ICCPR (Act. 18).
4. The prohibition of discrimination in relation to the provision of, and access to, educational, facilities and opportunities can be derived from both Article 2 of the ICESCR and Article 26 of the ICCPR.
5. Even the European Convention on Human rights, which is generally considered to cover only civil and political right issues, states, (in Art, 2 of Protocol 1) that "no person shall be denied the right to education".

In essence, an attempt to separate ESCR from CPR is so unrealistic that it will amount to an attempt to separate a person's body from the spirit and soul, and expect the person to still function as he did before the operation. The total person functions best when the body, soul and spirit are together. ESCR and CP are best and most beneficial when treated with the same regard and priority.

Differences between the ICESCR and the ICCPR

The two covenants use different terminologies in relation to each right. Thus where the ICCPR contains terms such as "everyone has the right to..." or "no one shall be..." the ICESCR usually employs the formula "States Parties recognize the right of everyone to ..." there are major differences in terms of the general obligations clause. Article 2(1) provides that these are subject to the availability of resources ("to the maximum of its available resources"), and the obligation is one of progressive realisation ("with a view of achieving progressively").

This language has been subject to conflicting critiques, on the one hand, it is often suggested that the nature of the obligation under the ICESCR is so onerous that virtually no government will be able to

comply. Developing countries, in particular, are seen to be confronting an impossible challenge. On the other hand, it is argued that the relative open-endedness of the concept of progressive realization, particularly in light of the qualification about availability of resources, renders the obligation devoid of meaningful content. Governments can present themselves as defenders of ESR without international imposition of any precise constraints on their policies and behaviour. A related criticism is that the covenant imposes only “programmatic” obligations upon governments – that is, obligations to be fulfilled incrementally through the ongoing execution of a programme. It therefore becomes difficult if not impossible to determine when those obligations ought to be met⁴². It is important to briefly highlight some notable provisions of the ICESCR here.

Overview of ESCR

The UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (ICCPR) on 16 December 1966. The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴³ came into force on 23 March 1976 and January 3, 1976 respectively. ICESCR will be examined in more details. In terms of its form and contents, ICESCR is made up of a preamble and 31 articles contained under v parts. The preamble among other things urges state parties to recognise the dignity and inalienable rights of all members of the human family as the foundation of freedom, justice and world peace. The heart of the covenant is found in Part III, which covers articles 6-15, and outlines the rights protected under the covenant.

⁴² Alston P. and Goodman R., 2012. Op.cit.

⁴³ The ICESCR was adopted by the United Nations resolution 2200(XXI) of 16th December, 1966, the United Nations General Assembly adopted and opened for signature, ratification and accession the ICESCR and it entered into force on 3rd January, 1976 and had been ratified by 146 states by June 2003. According to Janusz S. and Vladimir V., 2003, *A Guide to Human Rights: Institutions, Standards, Procedures*, UNESCO Publishing, p 264, this covenant and the International Covenant on Civil and Political Rights are the first all-embracing legally binding international instruments in the field of human rights and together with the Universal Declaration of Human Rights form the core of the International Bill of Human Rights.

These rights include the right to work⁴⁴, the right to fair conditions of employment,⁴⁵ the right to join and form trade unions⁴⁶, the right to social security⁴⁷, the right to protection of the family⁴⁸, the right to adequate standard of living, including the right to food, clothing, and housing⁴⁹, the right to health⁵⁰, the right to education⁵¹ and the right to culture⁵². The list is not exhaustive one and therefore allows for implementation of the ICESCR to other issues not listed in the covenant. The right to water is a clear example.⁵³

These categories of human rights are usually termed “second generation rights”, deriving from the growth of socialist ideals in the late nineteenth and early 20th centuries and the rise of the labour movement in Europe. It has been said that the economic, social and cultural rights are essential conditions for the fulfilment of civil and political rights, they are aimed at providing human beings with a right to those basic subsistent needs that make life liveable in dignity, as no dignity can be said to be inherent in a jobless, hungry, sick, homeless, illiterate and impoverished human being.

Part IV is about the system of supervision by submission of periodic report at intervals to be defined by ECOSOC on the measures which state parties have adopted and the progress made in achieving observance of the rights in the covenant. The reports are to be submitted to the UN Secretary-General, who is required to transmit them to ECOSOC for consideration. The ECOSOC may in turn, transmit the state reports to the commission on human rights for study and general recommendations or for information⁵⁴, and may invite the

⁴⁴ Article 6, ICESCR, 1966.

⁴⁵ Article 7, *ibid.*

⁴⁶ Article 8, *ibid.*

⁴⁷ Article 9, *ibid.*

⁴⁸ Article 10, *ibid.*

⁴⁹ Article 11, *ibid.*

⁵⁰ Article 12, *ibid.*

⁵¹ Article 13, *ibid.*

⁵² Article 15, *ibid.*

⁵³ Alston P. and Goodman Ryan, 2012. *International Human Rights Text and Materials* (The successor to *International Human Rights in Context: Law, Politics and Morals*) Oxford University Press, p.287 – 289.

⁵⁴ Article 19, ICESCR, 1966.

UN specialised agencies to report to it on the progress made in achieving observance of the rights.⁵⁵

Committee on ESC Rights

The main treaty body that oversees the implementation of economic, social and cultural rights is the Committee on Economic, Social and Cultural Rights. The ECOSOC in 1985 by its resolution, formed a committee of 18 independent members, elected for four-year terms on the basis of equitable geographical representation, known as the committee on economic, social cultural rights and whose concern is the ESCRs. The Committee was not foreseen by the ICESCR, nor was it mentioned therein. Unlike other committees of the UN, this committee is neither autonomous nor responsible to the states parties but to a main organ of the UN. The committee has been entrusted with assisting ECOSOC in the substantive task assigned to it by the covenant. In particular, its role is to consider states parties report and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the covenant by state parties. The Committee has been active in producing General Comments.⁵⁶

In terms of its goals, the International Covenant on Economic, Social and Cultural Rights (ICESCR) has the objective of creating conditions where everyone may enjoy his economic, social and cultural rights in order to ensure freedom from fear and want. To achieve its goals, the ICESCR in articles 16 and 25, puts an obligation upon state parties to provide reports of the implementation of the covenant. To ensure compliance with its provisions, it provides obligations upon states parties, which they must adhere to for the rights stipulated under the covenant to be fully realised. Failure to comply with its obligations by a member-state will amount to violation of the agreement which states willingly agreed to when assenting to the treaty. The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights to ensure compliance by member states.

⁵⁵ Article 16, ICESCR, 1966.

⁵⁶ Between 1989 and March 2012, the Committee had adopted 21 General Comments. See Alston P. and Goodman R. 2012. *Op.cit.* (note 51 above) P. 287.

The international law of ESCR provides a legal, political, and moral framework to challenge policies that perpetuate poverty and inequality. Just as governments are accountable under human rights law for denying political freedom, so too they are accountable for denying adequate food or health care. ESCR law also provides a framework for people to participate in claiming their own rights. This enables affected communities and NGOs to demand legal accountability in situations where policymakers would prefer to obscure the lines of responsibility and avoid public scrutiny.

Obligations of State Parties to the ICESCR

The states parties to the ICESCR are under the obligation to develop ESC rights enforcement strategies. The implication of this is that states parties have to set up administrative structures, allocate relevant budgets, adopt ESC rights enforcement programmes and plans that have a clear schedule, and encourage the participation of civil society⁵⁷. Article 2 of the ICESCR provides for obligations of states in the following terms:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would

⁵⁷ Article 2 (1)-(3) of the ICESCR 1966.

guarantee the economic rights recognized in the present Covenant to non-nationals⁵⁸.

Conclusion

This article has examined the evolution of the protection of economic, social and cultural rights, beginning from before the two world wars, to how human rights generally and CPR and the ESCRs particularly came into prominence after the Second World War. It has studied the relationship between international law and human rights, highlighting the sources of international law which invariably also constitute the sources of international human rights law. The importance of protecting the ESCR with the same commitment as in the protection of the CPR was established by looking at the relationship between ESCR and CPR, including the similarities and differences between the ICESCR and the ICCPR. The Economic and Social Rights Committee which oversees the implementation of the rights and obligations of states parties to the ICESCR as provided for in article 2 (1)-(3), progressive realisation of ESCR and arguments on the superiority or equality of the ESCR and CPR were all analysed. The article concluded that the two sets of rights are equally important,

⁵⁸ To avoid instances where some States may fail to, delay or postpone indefinitely taking action to comply, their obligations to realise the rights under the provisions of article 2 of the ICESCR were interpreted and broken down by the Maastricht Principles. The International Commission of Jurists, a group of experts in international law and human rights adopted the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights on 28 September 2011, at a gathering convened by Maastricht University. The Interpretative Principles specifically relating to Part II of the ICESCR which in Article 2(1) provides: "to take steps... by all appropriate means, including particularly the adoption of legislation", can be found in principles 16-18 as follow:

16. All states parties have an obligation to begin immediately to take steps towards full realisation of the rights contained in the Covenant.

17. At the national level states parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.

18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2(1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

interdependent, indivisible and interrelated, notwithstanding the fact that the effect of violating CPR may be more easily noticed than that of the ESCR. It recommended that the two sets of rights should be accorded equal importance as one cannot be enjoyed fully without the other and to achieve a holistic protection of human rights as intended in the Universal Declaration of Human Rights.

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