



The Global Initiative *for Economic, Social and Cultural Rights*

Economic, Social and Cultural Rights at the 28th session of the Human Rights Council March 2015

Traditionally the March session of the Human Rights Council is considered the busiest session of the year because of the High-Level Segment and the attendance of State dignitaries - this March session was no different. Economic, social and cultural (ESC) rights received significant attention with reports and resolutions in relation to the **housing, food, environment and cultural rights** mandates. In addition there was a full day discussion on **human rights and climate change**, the annual **ESCR omnibus resolution** focusing on **social protection floors** and a new initiative on the **right to work**.



The start of the 28th session also saw the beginning of the term of the German Ambassador, H.E. Joachim Rucker, as the new council President. Civil society has commended Ambassador Rucker on actively protecting space for civil society to participate in the Council session and his firm position on condemning reprisals. Despite a packed agenda Ambassador Rucker's efficient time management also managed to keep to the schedule and avoid serious run overs.

Women's rights to housing, land and water

The issue of discrimination against women in rights to housing, land and water was highlighted during a side event on 11 March on advancing women's empowerment. The event which was co-hosted by GI-ESCR, the missions of Germany, Finland and Sierra Leone, the Initiative for Gender Equality and Development-Africa and Human Rights Watch, featured an impressive panel of speakers including a member of the CEDAW Committee, the Special Rapporteur on the right to adequate housing, the Ambassador of Sierra Leone and civil society representatives.



All of the presentations were of a very high standard and offered stimulating perspectives on the rights of rural women, structural discrimination against women, the process within the African human rights system to address discrimination against women in marriage and divorce, the



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importance of a gender perspective in the right to housing and impacts on women of contaminated water sources.

Ms Barbara Bailey, CEDAW Committee member gave a powerful presentation on the rights of rural women, highlighting discriminatory customary systems and the differential impact on women of land-grabbing. She concluded by calling for the challenging of '*entrenched patriarchal ideologies and stereotypes that undergird and legitimize gender inequalities and violations of these rights and also impedes women's access to justice*'. Her presentation is available [here](#).

Right to Adequate Housing

On 9 March the Special Rapporteur on the right to adequate housing, Ms Leilani Farha, presented to the HR Council her first report on the topic of local and sub-national governments and the right to adequate housing (A/HRC/28/62) and participated in an Interactive Dialogue with States.

The Special Rapporteur's toward decentralization, urbanization and human governments have critical related areas, not only for also for positive measures realization of the right to



as: infrastructure development, land-use planning, upgrading of informal settlements, development and administration of housing and social programmes, market regulation and resource allocation.

The report reinforces the position under international human rights law that obligations of States extend to all levels of government and to any exercise of governmental authority: 'All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level — national, regional or local — are in a position to engage the responsibility of the State Party.'¹ Thus, the wide range of housing policy and programme decisions often made at the local level, including budgeting, planning, zoning, allocation of benefits and publically funded housing units, the provision or regulation of basic services, rent subsidies, and any other decisions related to access to adequate housing, must comply with applicable human rights norms.

She considers some of the challenges to implementation of the right to adequate housing by local governments and records a general concern that responsibilities are transferred away from national level governments without a concomitant transfer of resources, knowledge, capacity and accountability for human rights obligations with respect to the right to adequate housing.

In addressing international accountability and local governments the report considers the engagement with local governments by treaty bodies, the UPR and Special Procedures. It also looks at effective remedies at the domestic level.

report explains how the trend combined with rapid mobility, means that local responsibilities in housing and the prevention of evictions, but required for the progressive adequate housing, in areas such

¹ Human Rights Committee, General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, para. 4 ; A/HRC/28/62 para 9.



Finally the report discusses some emerging initiatives for human rights accountability of sub-national governments, such as ‘human rights cities’ and the concept of the ‘right to the city’, which highlights the social function of cities.

Right to Food

The Special Rapporteur on the right to food presented her report (A/HRC/28/65) to the Council on barriers to remedies with respect to violations of the right to food, including the question of extra-territorial implementation in relation to the justiciability of the right to food. The Special Rapporteur’s report presents a summary of recent legal case law on the right to food, drawing on the excellent FAO publication ‘Legal Developments in the Progressive Realisation of the Right to Adequate Food: Thematic Study 3’.² It looks at legal frameworks and cases in each geographical region, highlighting the developments in India as some of the most advanced and innovative in the world. In Africa, the Special Rapporteur noted several African Commission cases relating to indigenous peoples and their land and in she lauded Latin America for having the most developed legal frameworks for protecting the right to food.

The report also specifically addresses States’ extra-territorial obligations (ETOs) with respect to the right to food. The report notes: *‘In recent years the scope of a State’s human rights obligations has progressively evolved to include duties to exercise jurisdiction over activities that are connected to one State but have an impact in another.’*³ She underlined that the accountability of transnational corporations (TNCs) is paramount to the full realisation of the right to food.

In the Interactive Dialogue that followed:

- Some States underlined the importance of advancing gender equality and recognizing women as key drivers for combatting hunger and malnutrition. The Special Rapporteur agreed that women’s rights to land ownership are critical to the realisation of the right to food.
- Some States and NGOs drew attention to the role of TNCs especially with respect to access to seeds. In a similar vein, a number of States called for greater attention to be paid to the significant impact on the right to food of trade and investment policies and decisions of international financial institutions.
- Some States and NGOs welcomed a focused discussion on extra-territorial obligations and underlined land grabbing as a particularly concerning phenomenon with extra-territorial elements which required greater regulation at the national and international levels.



² FAO, *Legal developments in the progressive realization of the right to food* (2014), <http://www.fao.org/3/a-i3892e.pdf>. See also FAOLEX, an online database of national legislation re food and agriculture (available at <http://faolex.fao.org>).

³ A/HRC/28/65 at para 41



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- Many NGOs emphasised the role of small-holder farmers as key to food security and called for States to prioritise secure access to water, land and other resources, to ensure these farmers can continue in their vital role.

The annual Cuban sponsored resolution on the right to food (A/HRC/RES/28/16) was also adopted by the Council without a vote. Of note are clauses:

- ‘recognising the importance and positive role of smallholder and subsistence farmers, including women and young farmers, family farmers and farmers in less favour areas,...’ particularly in relation to food security;
- ‘stressing the need to increase official development assistance devoted to agriculture...’
- expressing concern about the gender dimensions of hunger and malnutrition; and
- requesting the Special Rapporteur to continue to monitor the evolution of the world food crisis and its impact on the right to food.

Human rights and the Environment

The Independent Expert on human rights and the environment, Mr John Knox, presented his annual report to the Council at this session. The report (A/HRC/28/61) is a summary of good practices in the use of human rights obligations relating to the environment, including:

- procedural obligations to make environmental information public, to facilitate public participation in environmental decision-making, to protect rights of expression and association, and to provide access to legal remedies;
- substantive obligations, including obligations relating to non-State actors;
- obligations relating to transboundary harm; and
- obligations relating to those in vulnerable situations.

The Council also considered a resolution on human rights and the environment (A/HRC/RES/28/19) sponsored by Cost Rica, Slovenia, Switzerland, Morocco and the Maldives. The resolution, which was adopted by consensus, changed the mandate from an ‘Independent Expert’ to a ‘Special Rapporteur’ and extended the mandate for a further three years. Whilst the draft resolution specifically encouraged the mandate holder to continue work on climate change, biodiversity and ecosystem management and environmental governance, during the negotiations in exchange for the change from Independent Expert to Special Rapporteur, the core group had to amend the resolution to delete the specific mention of a thematic focus on climate change, biodiversity and the SDGs. The resolution asks the Special Rapporteur to: continue contributing to intergovernmental conferences; apply a gender perspective in his work; and submit an annual report to the Council. Finally, the resolution requests OHCHR to convene an expert seminar on the effective implementation of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, challenges and the way forward, and to submit a summary report of the seminar.



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Human Rights and Climate Change

On 6 March the Council held a full day discussion on human rights and climate change, which involved two panel discussions. The first panel was on 'Challenges and ways forward towards the realization of human rights for all, including the right to



development, in particular those in vulnerable situations, as well as measures and best practices to promote and protect human rights that can be adopted by States in addressing the adverse effects of climate change on the full and effective enjoyment of human rights'.

The first panel discussion comprised the President of Kiribati, the Minister for Foreign Affairs of Bangladesh, Mary Robinson and speakers from the UN Framework Convention on Climate Change (UNFCCC), the Special Rapporteur on the rights of indigenous peoples and the Pan-African Climate Justice Alliance.

President Kiribati described the dire threat climate change posed to his country's survival and admitted migration was inevitable. He called for a global discussion about migration with dignity. A number of other States particularly under threat from climate change voiced similar concerns and pleas for strong and urgent global action. Many global south States emphasised the higher level

responsibility of developed States who had contributed the majority of the climate change inducing greenhouse gases. They stressed international co-operation particularly in relation to funding of adaptation measures and climate technology transfer. Echoing the debates in Lima last year, they also called for justice in the upcoming Paris UNFCCC meeting where they seek a legally binding agreement, which recognises States' 'common but differentiated responsibilities.'

A number of States demanded that climate change be mainstreamed in all human rights bodies and mechanisms. Many other States emphasised the importance of not only incorporating human rights obligations in the forthcoming climate change agreement, but operationalising human rights considerations in all climate change policies and programmes. There was a general sentiment that there could be better co-ordination, collaboration and information exchange between the multi-lateral climate change and human rights bodies.

The second panel was on 'The adverse impacts of climate change on States' efforts to progressively realize the right to food, and policies, lessons learned and good practices.' The discussion commenced with a video message from Ms Hilal Enver, Special Rapporteur on the right to food, who noted the complicated link between food security and climate change. Unfortunately climate change mitigation and adaptation policies have further reduced food availability she said. For instance clean energy alternatives such as bio-fuels and clean development mechanisms like forest preservation have moved land use away from agriculture, jeopardising the right to food. She warned



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that clean fuel for cars in the West was leading to less food in Africa and South Asia.

The Council also heard from the Prime Minister of Tuvalu, the National Food Authority of the Philippines, the Food and Agriculture Organization, La Via Campesina and FIAN. All emphasised the serious risk to the right to food from the adverse impacts of climate change. For example, livelihoods were endangered, natural resources for agriculture production were reduced and degraded, physical access to food was hampered, and food prices increased and were volatile due to climate change. The disproportionate impact on vulnerable groups and poor people was also emphasised. There was a general call for the mainstreaming of human rights in climate change policy, for urgent action supported by significantly increased funding to assist with adaptation in the developing world.

NGOs also highlighted the role of private actors in causing climate change, mitigating and adapting to it. They also pointed to the importance of participation of those most affected when defining climate change mitigation and adaptation policies and programmes.

A number of NGOs in both panel discussions called for the establishment of a Special Rapporteur on human rights and climate change.

Gender is critical for the realisation of the right to food in the face of climate change said the FAO. Since women represent 43% of the labour force in the agricultural sector of developing countries, engaging with women and empowering them had to be part of a global solution is vital to effectively realising the right to food globally.

Prime Minister of Tuvalu called for a special session of the Council on human rights and climate change.



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Independent Expert on Foreign Debt

The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Juan Bohoslavsky, produced two reports which he presented to the Council at this session. The first was his report on financial complicity: lending to States engaged in gross human rights violations (A/HRC/28/59) and the second was an Interim Study on 'Illicit financial flows, human rights and the post-2015 development agenda' (A/HRC/28/60).

Cuba also presented its resolution on this issue: 'The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural right' (A/HRC/RES/28/14). It was adopted by vote (Y:31 N:14, A:0). The six page resolution provides an exhaustive critique of structural adjustment programmes, vulture funds and the failure of debt relief commitments. It also calls for greater attention to the debt burden of poor countries, for the Bretton Woods institutions and private actors to undertake human rights impact assessments and encourages States to participate in the process established in the General Assembly for a multilateral legal framework for sovereign debt restructuring.

Right to Work

This was a new initiative led by Egypt together with a core group of Mexico, Indonesia, Greece and Romania. The right to work as established in Article 6 of the ICESCR and also defined in ILO Conventions and Recommendations has not previously been specifically addressed by the Council or the General Assembly. Given the very extraordinary levels of unemployment in all regions of the world and particularly for youth and women, it is encouraging to see the Council supporting this initiative.



Being the first resolution on the topic, the co-sponsors opted to put forward a relatively general and uncontroversial text, which calls for a report from OHCHR on the right as well as challenges and good practices. The stated intention is that this will be an annual resolution which focuses on different challenges relating to the right to work and calls for an annual report on such issues and from time to time and for a panel discussion.



The resolution (A/HRC/RES/28/26) was adopted without a vote. It takes note of the work of the ILO in this area and defers to its 'primary role, mandate, expertise, and specialization in relation to the promotion of decent work and full and productive employment for all'.

Importantly, the resolution refers to the right to 'just and favourable conditions of work' (Art 7 ICESCR), however it does not, despite civil society suggestions, refer to the right to form



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and join trade unions (Art 8 ICESCR) or to freedom of assembly (Art 21 ICCPR) and ‘freedom of association with others, including the right to form and join trade unions for the protection of his[her] interests’ (Art 22 ICCPR).

The resolution also acknowledges the vulnerable situation of women and persons with disabilities with respect to the right to work and recalls the MDG on work and welcomes the stand alone goal on work proposed in the SDGs process. The right to work of migrants, asylum seekers and refugees was not addressed, as this was seen as likely to be too divisive for this first resolution. Hopefully these important issues will be addressed in future resolutions and reports on the right to work.

Resolution on Economic, Social and Cultural Rights

Portugal put forward its annual resolution on ESCR, which this year focused on social protection floors (A/HRC/RES/28/20) and was adopted by the Council without a vote. The resolution noted the OHCHR report on this topic (A/HRC/28/35) and recognised that ‘social protection policies play a critical role in realizing economic, social and cultural rights for all, reducing poverty and inequality, and supporting inclusive growth’. Unfortunately, the language was slightly watered down in negotiations such that the resolution ‘Acknowledges that social protection floors *may* facilitate the enjoyment of human rights, including the rights to social security, health, an adequate standard of living’ and ‘*may* contribute to ensuring minimum essential levels and promoting the progressive realization of economic, social and cultural rights, gender equality and the protection of persons in a situation of vulnerability.’

The resolution concluded by asking the Secretary-General to continue to prepare an annual report on ESCR, this time focusing on ‘a compilation of best practices adopted by States to measure progress in the realization of economic, social and cultural rights, including **national indicators** to advance the realization of such rights’.

The OHCHR report outlines the main characteristics of social protection floors and how they can contribute to ensuring the enjoyment of minimum essential levels of economic, social and cultural rights, reducing poverty and inequality. According to the ILO Social Protection Floors Recommendation (ILO Recommendation No. 202, adopted on 14 June 2012), social protection floors are nationally defined sets of basic social security guarantees that should provide access to essential health care and to basic income security for all those in need over the life cycle. In 2009 the ILO-led Social Protection Floor Initiative was established to respond to the limited social security coverage worldwide and the impact of the global financial crisis.

National social protection floors should move progressively towards universal and basic social protection for all, with a view to ensuring that no one falls below a certain income level and that everyone has access to essential public services, such as water and sanitation, health and education. The resolution also emphasises a gender perspective and addresses specific vulnerable groups (including informal workers and non-nationals). It concludes:



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‘Human rights norms and social protection floors complement each other. The success of national social protection floors in achieving gender equality, respect for the minimum core of economic, social and cultural rights and protecting marginalized groups, such as children, older persons, persons with disabilities, informal workers and non-nationals, will depend on whether they are established and implemented according to human rights standards and principles.’

Cultural Rights



This annual resolution (A/HRC/RES/28/15) was put forward by Cuba ‘taking note with appreciation’ of the report of the Special Rapporteur and extending her mandate for a further three years. It was adopted by consensus.

The Special Rapporteur in the field of cultural rights, Ms Farida Shaheed, presented her report to the Council on ‘Copyright policy and the right to science and culture’ (A/HRC/28/57). The report examines copyright law and policy from the perspective of the right to science and culture, emphasizing both the need for protection of authorship and expanding opportunities for participation in cultural life.

Special Procedures Communications Report

The annual consolidated Communications Report for all Special Procedures mandate holders was presented at the HRC28 (A/HRC/28/85). It is interesting to note that, as is usual, there are far fewer communications received and made by mandate holders in the area of ESC rights as compared with civil and political rights. The most common ESC rights violation to be alleged is the right to health and this is most commonly raised in the context of prisoners’ access to healthcare, together with allegations of arbitrary detention, torture and freedom of expression violations. Stand alone ESC communications are less common.

For some communications it is clear that whilst arbitrary detention (etc.) is complained of, the underlying issues relate to ESC rights violations. For instance there are a number of communications about harassment, arrest and torture of human rights defenders protesting about access to land and natural resources or forced evictions. Frequently the complaint is not also expressed as a violation of the underlying economic and social rights. For instance in a communication against Egypt relating to the raiding of the offices, and arrest of a number of staff members, of the NGO Egyptian Centre for Economic and Social Rights, the allegations were of violations of freedom of expression and freedom of peaceful assembly and association (amongst others). However, the NGO is a well known advocate on



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economic and social rights in Egypt and was targeted by the government for the purpose of silencing its critique on these issues. Another example is a communication against Myanmar regarding the harassment and arrest of a human rights defender protesting the confiscation of traditional lands.

There were approximately 22 'purely' ESC rights communications out of a total of 896.⁴ By way of example, the ESC rights communications included:

- US - the right to water and sanitation - relating to the Detroit water cut-offs;
- Thailand (two separate communications) - labour exploitation and trafficking in Thai food industry factories;
- India - the right to water and sanitation – the rape and murder of two girls whilst going to the toilet in the field because they had no toilet in their home;
- Thailand – environmental and health impacts of gold mines;
- Georgia – right to adequate housing and food - involuntary resettlement of an estimated 1,700 to 2,500 people, including from the Svan minority ethnic subgroup, to make way for the construction of a hydropower plant.

It is notable that the majority of the ESC rights communications involved disputes involving commercial interests and business entities.

Other resolutions of note

- A resolution on the right to privacy and the digital age was adopted without a vote (A/HRC/RES/28/27), although after significant negotiation and NGO interest. The resolution establishes a new mandate: Special Rapporteur on the right to privacy.
- A resolution put forward by Cuba entitled 'Composition of the Staff of the Office of the UN High Commissioner for Human Rights' caused controversy as it sought to take up recommendations in a recent report, the 'JIU report', regarding the 'management and administration' of the UN Office of the High Commissioner for Human Rights. The report proposes a mechanism to enable States to 'direct and monitor' the work of OHCHR and the High Commissioner himself. Many States and civil society actors were very concerned that the resolution poses a serious threat to the independence of the High Commissioner and his Office. The resolution (A/HRC/RES/28/13) was adopted by vote (Y:31 – N:16 – A:0) (after an oral revision).
- Algeria, Egypt, Jordan, Morocco and Saudi Arabia sponsored another controversial resolution entitled 'Effects of terrorism on the enjoyment of human rights'. The resolution was ostensibly proposed to fill the 'gap' after the decision was taken to bi-annualise the Mexican resolution on human rights and terrorism, in the interests of reducing the work of the Council. The title of the resolution belies the more troubling content which 'Calls upon States to strengthen further their national laws

⁴ This is for all mandates during the period 1 June 2014 – 30 November 2014. This is my own estimate based on a review of the summaries provided in the report.



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and mechanisms on countering terrorism’ but does not require that such laws comply with human rights law. It also calls for a panel discussion on this issue at the 29th session of the Council. The resolution attracted much civil society criticism (see [here](#)) regarding concerns that the resolution did not include safeguards for the work and safety of human rights defenders. It also fails to call on States to ensure that such laws and measures clearly identify which offences qualify as terrorist acts by defining transparent and foreseeable criteria. After concerted negotiation, an attempt to delay the vote and an unfortunate deal between States, the resolution (A/HRC/RES/28/30) was adopted after a vote (Y:25 - N:16 – A:6).

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