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Economic, Social, and Cultural Rights: Essential for Human Dignity

Tuesday, May 4, 2010, 3:45-5:15 pm

Facilitator:

Lourders Rivera, Program Officer, Ford Foundation

Speakers:

Christian Courtis, Program Officer, OHCHR

Ana e Brito Maneira, First Secretary, Permanent Mission of Portugal to the United Nations

Nicholas Lusiani, Program Officer, ESCR-Net

A major challenge for economic, social, and cultural rights is how to make them legally enforceable at the local level. The Optional Protocol to the ICESCR approved by the General Assembly in 2009 would allow individuals and organizations to file complaints directly with the treaty's enforcement Committee, but so far only 33 countries have signed it and only two have ratified it. Furthermore, there are important unresolved questions about what a rights-respecting social policy should look like, and dialogue is necessary between economists, social scientists, lawyers, and civil society.

Christian Courtis explored what is meant by ESC rights. The International Covenant of ESC Rights was signed in 1966, and addressed labor, an adequate standard of living, education, and cultural rights. Another entry point is focus on specific groups that face discrimination and an imbalance of social and political power, such as women, children, migrant workers, indigenous persons, and persons with disabilities. These power disparities also affect civil and political rights, because all rights are interconnected.

Is there a conceptual framework for differentiating these rights? Some obligations are enumerated in the Covenant. Monitoring can measure their progressive realization, through the development of quantitative and qualitative indicators in relation to other indicators. Another issue is unpacking how rights discourse fits into development discourse, in particular with the present opportunity to find synergy between the Millennium Development Goals and ESC rights implementation, and infuse the MDGs with rights-based language. An important distinction is that the MDGs state goals, and use a human-rights-based approach on a number of specific examples, including attention to vulnerable groups and the social positions of rights holders – but the MDGs are not useful for rights advocacy in the same way because rights discourse is more specific and calls for accountability, not just aspirations.

The main international legal actor is the Commission on ESC rights, including special procedures. Other treaty bodies also address ESC rights, including CEDAW and the Commission on Migrant Workers, and other UN bodies are also starting to look at ESC rights. Most of these efforts are driven by NGO backing and pressure. There is a trend to create institutional follow-up mechanisms, including the new Optional Protocol to open up enforcement possibilities with the Commission on ESC Rights.

Efforts to expand and enforce ESC rights take place at the national and international levels. There are efforts to include the language of rights in some national statistics organizations, advocacy at the legislative level, and implementation in national courts (e.g. India). In Europe, courts have used the lens of international standards in their interpretation of statutory laws.

Ana e Brito Maneira discussed the proactive role that Portugal has taken on ESC rights. This began after Portugal's 1974 revolution, when they returned to democratic governance and engaged with the Human Rights Commission, and specifically acknowledged ESC rights in their constitution. In the 1980s, for historical reasons, Portugal was considered a bridge builder in the polarized environment of the Cold War. In the Vienna Declaration in 1993, the World Conference on Human Rights reaffirmed the UDHR, with an emphasis on the idea that all human rights are of equal importance, and are indivisible, interdependent, and interrelated – thus seeking to end the qualitative distinction between civil and political and ESC Rights. A resolution in 1998 created the first ESC mandate for a Special Rapporteur on Education.

The Commission on Human Rights and then the Human Rights Council examined periodic reviews for the Civil and Political Covenant, but ECOSOC was responsible for reporting until 1985. The difference now remains the Optional Protocol, which allows violations to be brought to a Commission only for civil and political rights. An effort has been under way to create a similar Optional Protocol for ESC rights since 1991, with a series of working groups meeting from 2001-2008, when they submitted a draft of the Optional Protocol to the General Assembly. Only 33 countries have ratified it and two have signed it since it opened for signature last fall (compared to 165 ratifications for the Covenant on Civil and Political Rights, and 160 ratifications for the Covenant on ESC Rights). The US has not supported the Optional Protocol, but under the Obama administration they are no longer obstructing it.

Nicholas Luisani discussed how NGOs are approaching the UN over issues of ESC rights. ESCRNet is a network of over 200 individuals and organizations to share strategies and tools and encourage collective action, founded in 2003. They work on issues including the adjudication of ESC rights, legal recognition, strategic litigation, a database of case law, corporate accountability, and capacity building. They also work on economic policy and human rights standards at national levels, and foster social movements and peer-to-peer learning. They promote strategies and actions that use the UN from above and local advocacy from below. There are three main reasons to use the UN:

1. Seeking justice and accountability: people and groups seek to address wrongs through the UN
2. Seeking changes in norms, norm development and standard setting: attempts to address norms, new language and approaches, cross implementation

3. Seeking support, visibility, technical support, or political support: for example, the Special Rapporteur on Housing was recently invited by the US to look at the current situation and understand it through a human rights lens.

Practical challenges for NGOs include the difficulty of access to the UN (expense, jet lag, visas, schedule changes), a lack of capacity and knowledge of the UN system, and the state-centric nature of most human rights law (non-state actors currently have no forum for bringing actions against states). The UN Commission is a good resource for finding synergies, but the UN may not always be the best place to go. One recent success involved an organization for indigenous rights that came often to Geneva and built alliances with Geneva-based organizations, and received a ruling from the Committee on the Elimination of Racial Discrimination in favor of the Shoshone people, who were facing discrimination and violation of their land rights from mining companies and the US and Canadian governments. The best strategy is to link local and international efforts.

Other challenges are that governments often use the HRC to shield themselves from recognition of violations, and can use the principle of progressive realization to claim that they will address violations when they have the money. Others, such as the US, argue that these are not rights but should be left to citizens of democracies as part of the political process. Furthermore, fragmentation poses problems; different committees don't often talk to each other, and therefore don't generally understand the impacts of one commission's activities on another (e.g., CEDAW and ESCR Commission).

Funding is need to support access to UN bodies is a more, especially for indigenous peoples to access international fora. Even Geneva-based groups need to strengthen their ties with local organizations, and UN agencies need more information about local situations. NGOs helped to change the minds of governments regarding the Optional Protocol, but work on Optional Protocol ratification is under-resourced compared to other treaties such as the Rome Statute.

Q: Is it better to bring one activist here full time or bring 5 local activists for short trips?

A: It's possible to have an impact without a full-time presence, but it does help to build personal relationships in Geneva with organizations and offices, and to know who to see and provide trainings for local activists when they come. For example, 3 Latin American NGOs came together to fund one person in Geneva (requires a relationship of trust).

Q: What about land reform at national levels?

A: The Special Rapporteur on the Right to Food is starting to look at land reform issues, and put together guiding principles, but NGOs need to raise the issue.

Q: What are practical ways to unfold the content of the right to education?

A: The right to education includes both access (economic access) and quality and adequacy. States have obligations on both. The MDGs can be used as an entry point. Also, the Special Rapporteur on Education created a hub and a website that sets out clearly what the right to education means.

When India was recently reviewed by the Committee for the first time, they considered its national employment laws and listed positive steps and violations. The Committee has taken a few steps

regarding corporate accountability and made some general recommendations, but it is a challenge to translate them into policy.

Q: How is it that courts don't know how to interpret ESC rights? They have been looking at benefits such as medicare for a long time, stemming from the Cold War.

A: The US Constitution is comparatively old (most date from the 20th century). But in the 60s, 70s, and part of the 80s, and in state courts.....not enough ESCR advocates are lawyers. Once the Optional Protocol is adapted, national governments can replicate its mechanisms and jurisprudence on a national level.