

# **Economic, Social and Cultural Rights Funders' Guide**

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January 2011



## Introduction

The purpose of this guide is to *inspire* and *assist* foundations, bilateral funding institutions and philanthropists to better understand and engage in support for work to promote economic, social and cultural rights (ESC rights). Protection and fulfillment of these rights-- to education, health care, adequate housing, water and sanitation, a clean environment, decent work conditions, and fair pay—have long been a priority for human rights organizations and social movements in the global south and are increasingly recognized as a priority in the global north, particularly by historically marginalized communities. In recent years, anchor global human rights organizations such as Amnesty International have taken long overdue steps to address ESC rights alongside their “traditional” civil and political rights focus. At the same time, there is momentum in the global movement: while human rights organizations and social movements are securing concrete victories in the struggle for ESC rights in countries from Colombia to Egypt, there is tremendous work still to be done. This is an unprecedented moment for the human rights funding community to reflect these priorities and support further advances. With a better understanding of the organizations engaged in this work and the opportunities to advance documentation and campaigning, achieve policy wins and seek redress for abuses, we hope that funders begin to consider how they might incorporate support for ESC rights giving in their grant making.

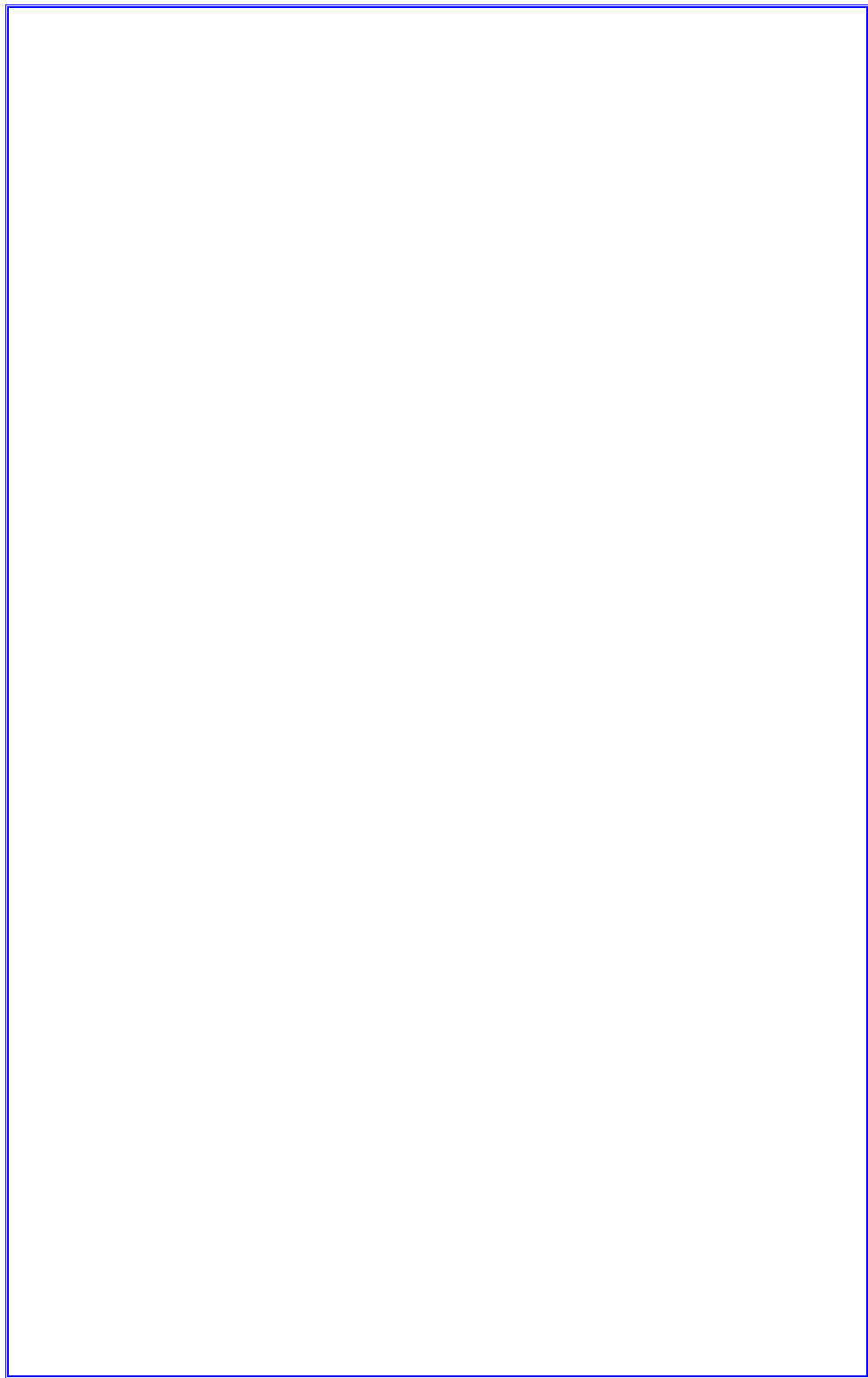
Thanks to Cathy Albisa, Executive Director of the National Economic and Social Rights Initiative; Malcolm Langford, Director of the Socio-Economic Rights Programme at the Norwegian Center for Human Rights; Julieta Rossi, Executive Director, and Suad Elias, Deputy Director of the International Network for Economic, Social and Cultural Rights (ESCR-Net); Ignacio Saiz, Executive Director of the Center for Economic and Social Rights; Cecilia Garza and Catherine Townsend of Wellspring Advisors; Alicia Yamin, Harvard School of Public Health; Bret Thiele and Mayra Gomez of the Center on Housing Rights and Evictions; and Monette Zard of the Ford Foundation who offered input and guidance as we prepared this guide.

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## I. Making the Connection: Poverty and Human Rights

*~I am often asked what is the most serious form of human rights violations in the world today, and my reply is consistent: extreme poverty.~*

Mary Robinson  
Former UN High Commissioner for Human Rights

Today, more than 440 million people around the world live in chronic poverty, and risk passing that legacy on to their children.<sup>i</sup> They are vulnerable to premature death from easily preventable diseases, and live under continuous threat from lack of shelter, food and access to basic sanitation and water. The scope of the problem and the scale of human suffering come into sharper focus when we consider that:

- In the developing world, more than one-third of the urban population lives in slums;<sup>ii</sup>
- More than 2.3 million Americans are homeless each year, of which 34% are families;<sup>iii</sup>
- 72 million children do not attend school and lack access to primary education;<sup>iv</sup>
- Almost a million people die from malaria each year, mostly young children in sub-Saharan Africa;<sup>v</sup>
- Every year, six million children die from malnutrition before their fifth birthday; and<sup>vi</sup>
- Half the population of the developing world lacks basic sanitation.<sup>vii</sup>

For people trapped in a cycle of poverty, the problem is not simply lack of money. It is a lack of power. Poverty leaves men, women and children hungry and illiterate; living in precarious and unsafe conditions; and subject to discrimination, political exclusion and violence. Poverty denies people their human rights. People living in poverty lack secure access to the living conditions, services or opportunities that would ensure and enable them to live a dignified life, a central tenet of universal human rights.

### What are ESC Rights?

Economic, social and cultural rights embody the essential elements for a life of dignity and freedom, including health, housing, education, food, water, work, social security, culture and a healthy environment. ESC rights were recognized in international law through the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948, and today are considered to form part of customary international law. ESC rights were legally codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR) which has been ratified by more than 150 countries. An Optional Protocol to the ICESCR was adopted in 2008 which will make it possible for individuals to bring ESC rights claims to a UN Committee when it comes into force. ESC rights are also codified in numerous other international treaties and regional human rights mechanisms. In addition, many countries have recognized ESC rights in their national constitutions and domestic law.

ESC rights have emerged as a powerful response to poverty as the linkages between poverty and human rights have gained greater clarity. ESC rights provide a platform built on legal obligations and universal standards for challenging poverty and social exclusion. By grounding basic economic and social needs in *rights* (not only policy), the ESC rights framework shifts and strengthens poor communities' claims from altruism to entitlement. Individuals and communities become active participants in asserting their rights, rather than passive recipients of charity. Through this process, they expand and strengthen the ways of holding their own governments accountable, gaining power and creating pathways out of poverty. As governments make political and policy choices to allocate resources in certain ways, ESC rights empower poor, marginalized and vulnerable communities to challenge those choices and hold governments to the binding obligations they have assumed to respect, protect and fulfill ESC rights. In these mutually reinforcing ways, poverty becomes an issue of justice, and is made more "actionable."

### ***Global Dimensions***

There is a tendency to think of ESC rights as only relevant in developing countries: poverty and the human rights violations that flow in its wake affect poor people in poor countries. Therefore, according to this view, developed countries have little cause to address ESC rights violations at home, and a limited role to play in enhancing protection of ESC rights in other countries. While the magnitude of the problem may vary, violations of economic and social rights occur in wealthy countries as well as poor ones, and the hardship they inflict is great for all whom experience it. Lack of access to basic healthcare, housing, education, and food impact the life chances of people in poverty around the world and across nations. ESC rights warrant concern and compel action by all governments to address violations domestically as well as to help advance protection of ESC rights abroad through international cooperation and development aid.

Another important global dimension to ESC rights relates to the often unintended yet deleterious effect that one country's policies can have on the ability of another country to protect and fulfill the human rights of its own people. Governments, international financial institutions, and corporations can undermine or thwart the capacity of another government to advance ESC rights due to the requirements of trade agreements, investment treaties, and 'development' projects. For example, the vigorous enforcement of intellectual property rights through the international trade regime closed off avenues for developing countries to acquire generic medicines, thereby limiting their ability to make life-saving drugs widely available to people living with HIV/AIDS. As human rights groups have become more attuned to the impacts of global economic forces and agreements on the realization of human rights locally, they continue to explore ways of using the ESC rights framework to protect the human rights of marginalized and vulnerable communities and hold governments and corporations accountable for impacts beyond their borders.



## **Building a Successful Fair Food Campaign in the US: Protecting human rights of workers and changing industry practice**

Due to severe under-enforcement and gaps in US labor and safety legislation, farmworkers in Florida's agricultural industry endure oppressive working conditions, including sub-poverty wages; long hours with no right to overtime pay and no right to organize; and lack of access to healthcare while routinely exposed to dangerous toxins and pesticides. According to a US government report, they are "among the most economically disadvantaged working groups in the US."<sup>viii</sup> In the most extreme conditions, farmworkers in Florida have been subject to modern-day slavery – forced to work with little or no pay while being held against their will. Since 1997, the US government has successfully prosecuted seven cases of forced labor involving more than 1,000 workers. The Coalition of Immokalee Workers (CIW) was formed in 1993 as a community-based farmworker movement to push for improved working conditions, fair wages and fair treatment in accordance with international human rights standards. Today, the CIW has over 4,000 members.

While the US government has the primary obligation to respect, protect and fulfill human rights, CIW recognized early on that the concentration of buying power among a few corporate purchasers of Florida produce gave the corporations tremendous influence over the working conditions – and protection of human rights – for farmworkers. Targeting the corporate buyers, CIW mounted a Fair Food Campaign which calls upon the corporations to pay an extra penny per pound to the farmworkers who pick the tomatoes they buy and put in place a human rights code of conduct and monitoring system to prevent abusive labor practices. CIW in close partnership with the National Economic and Social Rights Initiative (NESRI), the RFK Memorial Center for Human Rights and others formed an Alliance for Fair Food which mobilized a network of human rights, religious, student, and labor organizations to support the Fair Food Campaign. CIW won a series of notable victories, negotiating agreements with YUM! Brands (parent company of Taco Bell), McDonald's, Burger King, Subway and Whole Foods, among others. In November 2010, CIW announced a landmark agreement with the Florida Tomato Growers Exchange which will extend the Fair Food principles of the campaign to over 90% of the Florida tomato industry. CIW and its allies have begun not only to secure human rights protections for farmworkers in Florida but to change an industry's set of labor practices.<sup>ix</sup>

## **II. Gaining Ground: ESC Rights Approach**

**Why use a human rights framework?  
Activists can leverage legal obligations and universal standards  
to challenge poverty and social exclusion**

There is a growing awareness – by community organizers, development practitioners, policy analysts, legal advocates and funders – of the additional leverage gained by using a human rights framework. A dynamic practice is emerging as advocates continue to gain experience using legal obligations and ESC rights standards in combination with an array of new tools and strategies. Activists have used the rights framework in innovative ways to protect and promote economic and social rights of struggling communities and marginalized groups around the world – and they have won. ESC rights have been used successfully to halt forced evictions of thousands of slumdweller in Kenya; catalyze a Right to Food Campaign and avert starvation in

India; protect the right to education of Roma children in Europe; and achieve access to medicines for people living with HIV/AIDS in South Africa, Venezuela, Brazil and elsewhere. These victories and others illustrate the tremendous power of individuals and communities claiming their rights to health, food, water, a clean environment, education, and housing in courts, through policy-making, and by direct political action.

### ***Claiming ESC Rights in Court***

ESC rights have been claimed before courts in various ways generating a growing body of case law and demonstrating that they are legally enforceable. Human rights advocates litigate ESC rights directly before courts resulting in judgments based on the content of the right (a direct approach to ESC rights adjudication). They also litigate ESC rights by arguing for their protection as a component of civil and political rights, such as the right to life (an integrated approach to ESC rights adjudication). Even in countries that have not ratified the International Covenant on Economic, Social or Cultural Rights (ICESCR) or enshrined ESC rights in their constitution, advocates are able to bring strategic litigation using an approach based on the principles of non-discrimination and equality (an indirect approach to ESC rights adjudication). Protection can be sought using equal protection or a prohibition on discrimination, regardless of the content of the specific right. Non-discrimination and equality are powerful tools for protecting ESC rights in part because they place immediate obligations on States to remedy practices and policy which are discriminatory in their intent and/or effect and to put into place programs aimed at remedying historical patterns of subjugation. They have been successfully employed in many legal victories.

#### **Catalyzing a Right to Food Campaign in India: Grounding ESC rights in the right to life**

In 2001 in the state of Rajasthan, an increasing number of people died from starvation, despite an excess of grain held by the government for official times of famine. The People's Union for Civil Liberties (PUCI) petitioned the court for enforcement of the Famine Code, permitting the release of grain stocks in times of famine. PUCI grounded their arguments in the right to food, deriving it from the right to life enshrined in the Indian Constitution. The court ordered that the Famine Code be implemented for three months including grain allocation for the food-for-work program; the provision of grain at a set price to families below the poverty line; the provision of free grain to people without means of support; and the progressive implementation of the midday meal program in schools. The case was an enormous success which catalyzed a national Right to Food campaign in India that is ongoing. It has also had a spillover demonstration effect internationally. As one of the few cases to litigate the right to food directly and win, it has provided advocates around the world with a strategic precedent and inspiration for advocacy.<sup>x</sup>

### ***Mobilizing for Enforcement of ESC Rights***

Claiming ESC rights in court – and ensuring their enforcement afterwards – is most effective when the legal strategy is complemented by and builds upon strong organizing and skillful advocacy. Activists have learned from first-hand experience that this is particularly true when the affected communities lead advocacy efforts. A strategic partnership between litigation and social mobilization reinforces the power of each, and encourages education and organizing efforts to make government accountable for the protection of rights or delivery of essential services in people's lives. Social mobilization can have a powerful impact by raising public support for an

issue; putting pressure on a government, corporation or international institution to respect and protect socio-economic rights that are at risk; and keep the spotlight on monitoring to ensure that the decisions reached or protections granted are implemented fully. Effective advocacy through mobilizing grassroots support is proving pivotal to securing economic and social rights victories.

### **Gaining Access to Medicines and Saving Lives in South Africa: Mobilizing support and enforcement of ESC rights**

By 2000, HIV/AIDS had become an epidemic in South Africa with an estimated 5 million people infected. With approximately 80,000 newborn babies infected each year through mother-to-child transmission of HIV/AIDS, the anti-retroviral drug Nevirapine offered the potential of reducing the number of infected newborns by half. The drug was offered free to the South African Government for 5 years, but the Government announced that it would only make the drug available in a limited number of pilot sites after an initial delay of 1 year in setting up the sites. The Treatment Action Campaign (TAC), a South African social movement formed to advocate for access to affordable treatment for people living with HIV/AIDS, launched a constitutional challenge, alleging a violation of the right to access to health care services and demanding a program to make the drug available throughout the country. More than 5,000 people marched to the court in Johannesburg for the opening of the hearing. The TAC won, compelling the Government to provide treatment to HIV-positive women during childbirth to decrease transmission of HIV from mother to child. The Government was forced to roll-out antiretroviral therapy through the public health system making it more widely available. The success of the campaign in this case is estimated to have saved tens of thousands of lives.

The TAC in South Africa twinned strategic litigation with social mobilization through its successful access to medicines campaign. The TAC worked in close partnership with the Legal Resources Centre (LRC) and the AIDS Law Project to take forward right to health cases, seeking access to medicines for people living with HIV/AIDS. The social movement set the agenda and the stage for legal action, and then in turn provided constant monitoring of government implementation after the decision was won. When the government failed to comply with the decision and provide antiretrovirals, thousands of protestors turned out to put pressure on the government. In February 2003, the TAC organized more than 10,000 people in a Stand Up for Our Lives march to Parliament, calling on the South African Government to sign onto a HIV/AIDS Treatment and Prevention Plan. The strength of the social mobilization by the TAC – in the lead-up to the case and perhaps more importantly in the long monitoring afterwards – won victories that forced the Government to make available antiretrovirals and ultimately saved lives. It also provided a model that helped to catalyze a broader international access to medicines movement that has gone a long way to advance the right to health for communities all over the world.<sup>xi</sup>

### ***Leveraging International Mechanisms to Protect ESC Rights***

The most effective protection of ESC rights is found at the national level. However, the international human rights system can play a powerful complementary role in reinforcing and filling gaps in domestic measures of protection. There are a number of mechanisms available through the UN and regional systems, which can be used to put pressure on governments to meet their human rights obligations. Activists are gaining ground by leveraging the use of international mechanisms in tandem with strong national advocacy and local organizing.

One important international mechanism available to ESC rights activists is the use of alternative or parallel reporting to the UN Committee on ESC Rights, which allows NGOs to submit an alternative report to the government report on progress made in protecting and promoting ESC rights. The Committee uses NGO input to expose problems in current government efforts and to push governments to enhance protection of ESC rights and spur their greater realization.

Furthermore, the principle of indivisibility of human rights has increasingly been used to bring ESC rights claims before other UN committees, including those dealing with civil and political rights or discrimination against historically marginalized groups. As these committees include individual complaint procedures, this utilization increases avenues for the legal enforcement of ESC rights.

Another international mechanism that activists are able to leverage to positive effect is the use of UN Special Rapporteurs on the right to housing, health, food and education amongst others. A well-planned country visit by a Special Rapporteur combined with a powerful report and sustained follow-up advocacy can produce dramatic outcomes in domestic protection of ESC rights. When the Optional Protocol to the ICESCR comes into force, activists will have available another potentially powerful international mechanism that can be leveraged to protect and promote ESC rights.

#### **Halting Forced Evictions in Kenya: Successful use of international mechanisms and advocacy**

In February 2004, the Kenyan government initiated evictions of more than 2000 people in Kibera, a slum of over 1 million people in Nairobi, in order to make way for roadways and upgrading of infrastructure. The residents were not consulted nor given adequate notice, and no plans were made for relocation. The Nairobi-based NGO, Kituo Cha Sheria and other local groups worked quickly to mobilize at the local level as well as activate international partners, including the Centre on Housing Rights and Evictions (COHRE). Mass community demonstrations were organized, a stay of eviction was filed with the court, and international partners created a flood of pressure on the government through an urgent action citing international standards on evictions. Specifically, the urgent action campaign called upon the government to follow the procedures required under international human rights law on resettlement as specified in UN Committee on ESC Rights General Comment No. 7 on Forced Evictions: to explore feasible alternatives to eviction, ensure no person is rendered homeless, carry out consultation with the affected communities, and provide adequate and reasonable notice and legal remedies. A well-timed visit and report by the UN Special Rapporteur on the Right to Adequate Housing complemented the advocacy and increased the pressure. The advocacy action was successful: the Government halted the evictions. The Government also agreed to consultations with community representatives and lawyers, and to develop relocation plans before proceeding with roadway upgrading.<sup>xii</sup>

#### ***Transforming Public Policy to Advance ESC Rights***

An increasingly robust policy approach to advancing ESC rights seeks to integrate human rights into the full spectrum of policy-making. Activists – together with government officials and policy practitioners – have gained experience applying human rights standards in the design and formulation of public policy such that specific policies not only protect but also contribute towards the realization of rights. For

example, advocates have used ESC rights standards in the drafting of proposed government policies on health, education, housing and evictions. In addition, activists frequently use human rights standards to evaluate a policy in practice to identify gaps in rights protections and ways the policy can be amended to enhance protection and remedy violations. ESC rights-based policy analysis coupled with legislative advocacy has long been one of the main strategies employed by activists. However, it is gaining new strength as the content of ESC rights continue to be developed and clarified, making a more detailed policy analysis and application of legal standards possible.

### **Making Free Maternal Healthcare a Reality in Sierra Leone: Rigorous use of policy analysis to advance the right to health**

Sierra Leone has one of the highest maternal and child mortality rates in the world: 1 in 8 women die during childbirth and 1 in 5 children die before they reach the age of five. With 70% of Sierra Leone's population living on less than \$1 a day, user fees created an impossible barrier for many people, effectively eliminating access to vital healthcare. For women giving birth in Sierra Leone, obstructed labor is one of the main causes of death. Yet, public hospitals were charging up to \$80 - \$250 for a caesarean section, putting the life-saving procedure out of reach of most women. A Free Care Campaign was mounted internationally, working with developing countries and donors to make free health care a possibility and a priority in poor countries, through development assistance amongst other avenues of support. In April 2010, the President of Sierra Leone, Ernest Bai Koroma, launched a free health-care policy for pregnant women, new mothers and children under the age of five. The announcement was heralded as a major victory in realizing the right to health for the people of Sierra Leone, particularly for the marginalized and vulnerable groups of poor women and children. In its first year of operation, it is anticipated that 1.2 million mothers and children in Sierra Leone will benefit from access to free healthcare.

Rigorous public policy analysis of healthcare user fees by the UK's Department for International Development (DFID), MSF and others played a critical role in informing government decision-making and paving the way for effective advocacy. A comparative policy analysis of the experiences of different African countries in removing user fees found that the benefits of a free care policy outweighed the costs of user fee systems. The analysis showed how high user fees greatly depressed demand for health services, effectively turning away large parts of the population from accessing basic healthcare. As a result, the user fees failed to raise additional revenue to channel back into underfunded health systems, undermining their original policy objective of "cost-sharing". In this way, the policy analysis laid out a strong argument for eliminating healthcare user fees.

Activists, policy experts and government officials strategically linked the policy analysis findings to the human rights obligations of the Government of Sierra Leone as well as donor governments to create a compelling and successful case for policy change. Under the ICESCR, Sierra Leone has an obligation to realize the right to health, including the right to maternal, child and reproductive health. It also has a duty to prioritize the allocation of resources to the most vulnerable and marginalized groups, and to address discrimination in health services. In addition, the development aid provided by donor governments, such as the UK, illustrates the importance of international cooperation and assistance in enabling the progressive realization of ESC rights.<sup>xiii</sup>

## Facts about ESC Rights

Fact #1: ESC rights are justiciable: they can be adjudicated and enforced by a court. Courts – and other legal bodies – can and have decided cases involving ESC rights, offering adequate remedy. There is a growing body of case law that has evolved in recent years demonstrating that ESC rights are legally enforceable. One of the arguments used to assert that ESC rights are not justiciable is that they are too vague – in their content and provisions – to be enforced by a court. This claim is refuted by an increasing body of General Comments and work of UN Special Rapporteurs and other experts as well as case law from domestic courts that continues to clarify State obligations and delineate standards. Together, these sources provide specific and substantive descriptions of the content of ESC rights and the standards and norms for their application and enforcement.

Fact #2: ESC Rights create negative obligations on the State (require a government to refrain from doing something) as well as positive obligations (require a government to do something). ESC rights have positive as well as negative dimensions, just as Civil and Political Rights do. The enforcement of ESC rights does not only raise issues involving the building of houses or provision of medicines, but also includes preventing illegal and arbitrary evictions. Similarly, the implementation of Civil and Political rights does not only include, for example, a prohibition on torture, but requires that the government proactively take effective legal, administrative and judicial measures to prevent torture.

Fact #3: Courts frequently decide issues that require allocation of public resources including cases of Civil and Political rights as well as ESC rights. Courts are already involved in a range of issues that require the allocation of public resources. The adjudication of Civil and Political rights cases frequently has budgetary implications. For example, the right to a fair trial requires public resources to develop and run the court system, including the provision of legal aid.

Courts should not usurp the primary role of the government in budgeting resources and running programs. However, the courts play a fundamental role in ensuring that those functions are carried out in a way that complies with the State's human rights obligations. In ESC rights, the courts use the concepts of Minimum Core Content and Reasonableness (a standard in some domestic courts) to direct that governments must do certain things and take certain steps, including steps that involve the allocation of resources. However, courts give governments a wide margin of discretion in deciding the means for implementing their ESC rights obligations. In this way, they balance the need to remedy violations while preserving a separation of powers.

Fact #4: Fulfilling ESC rights involves a range of actions by the government that are not costly to implement. The realization of ESC rights does not generally require the adoption of new and expensive programs as is often suggested. In many cases, it requires that the government refrain from certain actions (e.g. forced evictions) or that it regulate the behavior of third parties (e.g. corporations), in order to respect or protect a right. Where the government is already spending public resources on health and education and other social programs (which all governments do), ESC rights require that those resources are spent in a transparent, efficient and non-discriminatory way. Some aspects of ESC rights cannot be fully realized immediately. For instance, the full enjoyment of the right to health, which has budgetary implications, may be achieved incrementally over time through steady progress. Where ESC rights involve new costs, the government is obliged to take steps using the maximum available resources to achieve progressively the full realization of the right, and to ensure that there is no backward movement in the achievement of rights. The “progressive realization” of ESC rights is critical to ensuring that governments continue to make progress in fulfilling their human rights obligations, while recognizing the real financial constraints that countries face.

### **III. Why Support ESC Rights Now?**

The field of ESC rights has progressed dramatically over the past decade, and is now poised for much greater growth – and success – in protecting and promoting the economic and social rights of poor and marginalized communities around the world. Funders can play a pivotal role in leveraging this success to increase access to rights for poor and marginalized populations. Several key developments have come together to create a compelling moment of opportunity for funders to support ESC rights work now:

- Critical mass of standards and practice
- Promising array of new tools and strategies
- Newly-created Optional Protocol to the ICESCR
- Increased social mobilization around ESC Rights framework
- Diverse and dynamic field of potential grantees

#### ***A. Critical Mass of Standards and Practice***

In recent years, there has been substantive growth in the number and type of groups that work on ESC rights, the development of standards and norms that give content to these rights, and the level and vibrancy of NGO practice. The interplay between these three spheres has created a “critical mass” in the field of ESC rights, opening up new opportunities for deepening work as well as scaling-up and creating greater impact.

The content of ESC rights has been defined and elaborated through the General Comments and Recommendations of international treaty bodies, case law, and specialized reports and guidelines of UN and other international organizations, NGOs and academic research centers. This body of work has helped to establish the nature and content of ESC rights and win their acceptance as legally enforceable rights. These legal advances have been supported by a dynamic and growing NGO practice of strong national-level groups and a handful of international NGOs. These groups have expanded the frontiers of the field while consolidating gains for more established ESC rights. For example, in recent years ESC rights NGOs have created a breakthrough in the field on the right to water (a new area of rights work) while over the same period deepening and expanding the protections offered by the right to housing (a more established ESC right) to historically marginalized communities. With additional support, funders can capitalize on this critical mass and both widen and deepen the field of ESC rights promotion and protection.

#### ***B. Promising Array of New Tools and Strategies***

Another critical development has been the expansion of the tools and strategies available to advance ESC rights. This is most notable in relation to the justiciability of ESC rights: the debate has moved beyond whether ESC rights *are* rights that can be claimed in court to focus on new methods for implementing them. Today, ESC rights are being litigated directly before courts resulting in judgments. The strengthening of justiciability has spurred the use of ESC rights legal strategies by human rights advocates. It has also provided support for the development of new tools and complementary strategies such as:

- **Budget Analysis and Participatory Budgeting** – ESC rights entail legal human rights obligations for the state, which depend in many ways on the allocation of public resources through public budgets for their fulfillment. Public budgets are an important instrument through which governments comply (or fail to comply) with their human rights obligations. The application of budget analysis techniques for analyzing compliance has created a powerful new tool for economic and social rights monitoring and advocacy. Additionally, human rights processes, including in particular the right to participation, are crucial for budget formulation that results in the fulfillment of ESC rights. Most current budget work in this area focuses on identifying violations of ESC rights: identifying ways that government allocation of resources or actual expenditures have failed to meet human rights standards by analyzing and relating the relevant constitutional provisions, national laws and international laws and standards.
- **Monitoring and Indicators** – A dramatic expansion is underway in new initiatives to develop quantifiable indicators that measure whether a government has fulfilled its ESC rights obligations. Many of the new initiatives seek to take a set of legal obligations related to a specific right, such as the right to health, and translate those standards into a set of quantifiable and observable indicators. Data is then collected and analyzed to assess how well the state has fulfilled its human rights obligations – or to identify violations. Both budget analysis and indicators reflect a larger push in the field for quantitative tools to address the question of “progressive realization” and measurement more directly.
- **International and Regional Mechanisms** – For many years, activists have engaged the human rights mechanisms available in the international and regional systems to press for greater ESC rights protection. Recently, a growing awareness of the importance of sustained advocacy at the national level is creating the conditions for a more strategic use of the special procedures, such as the UN Special Rapporteurs, and alternative reporting mechanisms. This trend holds the potential for greatly increasing their effectiveness and impact. In addition, the adoption of the Optional Protocol has added a new potentially powerful enforcement mechanism to the activists’ toolkit.
- **Public Policy Analysis and Advocacy** – Public policy analysis and advocacy has always been a primary tool of change for ESC rights advocates. With the strengthening of justiciability, a more robust use of public policy analysis and legislative reform has been ushered in. As NGOs have had greater success in litigating ESC rights, a larger space has been opened up for using the standards and norms to draft and reform policy by working “upstream”. That is, human rights advocates can work with government officials to draft policies or white papers that incorporate ESC rights standards in their design. This process ensures that the new policy conforms to the government’s human rights obligations.

While these tools and strategies are gaining traction, they still require further development to create their maximum impact. Funders can play a key role in strengthening existing tools and developing new ones to leverage even greater social mobilization using the ESC rights framework, creating positive change for affected communities.



### **Innovative Use of Budget Analysis to Advance the Right to Health in Mexico**

Budget analysis is one of the most powerful new tools that has gained momentum in its application to ESC rights. One successful use of budget analysis to advance human rights has been the work of Fundar, a Mexican NGO that used budget analysis in an assessment of the right to health in Mexico. As documented in a case study, *Dignity Counts*<sup>1</sup>, Fundar examined the Mexican health sector budget between 1998-2002 to assess the government's fulfillment of the right to health for those who are either unemployed or employed in the informal sector (about 50% of Mexico's population). Using the Mexican Constitution and international human rights treaties, Fundar examined the government's fulfillment of its obligations with respect to (i) the progressive realization of the right to health, (ii) the government's use of maximum available resources, and (iii) guarantees in the International Covenant on Economic, Social and Cultural Rights that relate to maternal mortality, immunization programs, and the equitable distribution of health services.

Fundar found that despite overall increases in spending on health care, a disproportionate share of those resources was going to services for those employed in the formal economy – the population that could most afford health services and already had access to them. There was a clear pattern of discrimination in spending on health services for marginalized and vulnerable populations. Using the study to formulate policy changes, Fundar recommended that the government reconfigure funding to improve support for maternal mortality programs for marginalized and vulnerable populations. As a result of Fundar's research and advocacy, the government agreed to a substantial increase in funding for maternal health programs to address these gaps.<sup>xiv</sup>

### **C. Newly-created Optional Protocol**

After many years of advocacy, activists achieved a major breakthrough at the end of 2008 with the adoption of the Optional Protocol (OP) to the International Covenant on Economic, Social and Cultural Rights by the UN General Assembly. The OP will provide a complaints mechanism at the international level enabling individuals and communities to seek redress or otherwise obtain remedies for violations of ESC rights. The success of the campaign has generated additional momentum in support of ESC rights and provides a critical opening for activists, practitioners and donors to further advance ESC rights protection.

The adoption of the OP is expected to result in parallel gains to those achieved through the work of the Human Rights Committee under the Optional Protocol to the ICCPR which from 1977 - 2008 received 1,800 communications relating to 82 State parties (countries) and resulted in findings of violations in over 500 cases. The 1994 case of *Toonen v. Australia* resulting in the overturning of Tasmania's sodomy laws is illustrative of the potential of the OP to spur major domestic reform and result in remedies for individuals.

Among other benefits, the OP will encourage governments to improve adjudication at the domestic level and ensure more effective local remedies. By providing an international forum to hear, contest and interpret claims, the OP will generate a rich body of ESC rights jurisprudence and case-law and lead to the development of guidelines and principles directing governments on how to remedy violations, and respect, protect and fulfill rights.

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<sup>1</sup> *Dignity Counts: A Guide to Using Budget Analysis to Advance Human Rights*; Fundar, International Budget Project and International Human Rights Internship Program; Mexico and USA; 2004.

The OP campaign was led by a small but committed group of NGOs and social movements, the International NGO Coalition for an OP to the ICESCR, which worked for many years with little or no dedicated funding and no separate staffing. Now, there is an opportunity for funders to build on the momentum created by this campaign, support the critical next phase of work and provide needed resources to a coalition of groups with a proven ability to take on big challenges and win.

#### ***D. Increased Social Mobilization around ESC Rights Framework***

Many of the biggest and most well-organized social movements – such as the Treatment Action Campaign in South Africa, the Movimento dos Trabalhadores Rurais Sem Terra (MST) in Brazil, the Coalition of Immokalee Workers in the US, and Ekta Parishad in India - use a human rights framework and focus on promoting the ESC rights of their members. Increasingly they have found that human rights provides a set of universal standards for analyzing and framing the violations that their members suffer as well as a body of legal obligations to shape and inform the remedies they seek. In addition, many social movements have found the human rights framework invaluable in educating members, raising awareness amongst the broader public and building leadership within their movements. ESC rights is of increasing importance in strengthening the capacity of the most marginalized and vulnerable communities to claim their rights, hold their governments and other actors accountable, and deliver concrete successes.

There is increased mobilization around the ESC rights framework, in particular by social movements and grassroots groups. This uptake of ESC rights by social movements has led to success in securing economic and social rights wins for marginalized and vulnerable communities. In addition, this enhanced use has contributed to the strengthening of the tools, strategies and mechanisms for advancing ESC rights. For donors, social mobilization around the ESC rights framework provides a strong indicator of success and an opportunity to create large-scale impact for marginalized and vulnerable groups.

Recently, national-level social movements have begun to engage in peer-to-peer exchanges of information and strategies, and have linked up across national boundaries in solidarity. This globalization of social movements needs to be further facilitated, including via capacity building, by NGOs and donors alike as it continues to grow in size and effectiveness.

## Mobilizing a Peoples Movement to Secure Land Rights in India

By the early 1990s, many tribal peoples or adivasis in India were under continuous threat of displacement from their lands. The problem was exacerbated by the diversion of water resources for large-scale agricultural and industrial use. Cut off from the land, water and forests which sustain their communities, large numbers of affected peoples including tribal and dalit communities came together to form Ekta Parishad – “unity forum” – to assert control over livelihood resources by and on behalf of India’s poorest people. Grounded in the principles of non-violent action, Ekta Parishad has worked for the past 20 years to create changes in India’s laws, policies and power relations needed to end land seizures, ensure equitable land distribution, and protect access to livelihood resources. Today, Ekta Parishad has evolved into a mass peoples movement for land rights, working through 11,000 village-based organizations across 12 states in India.

In 2007, Ekta Parishad launched a national land rights campaign called Janadesh – the “People’s Verdict” – in what would become one of the largest non-violent actions for land reform in the country’s history. Beginning on October 2<sup>nd</sup> (the anniversary of Mahatma Gandhi’s birthday), 25,000 people representing communities from all over India came together in the city of Gwalior to march 350 kilometers to the capital, New Delhi. For one month, the landless poor – men, women, children and old people – walked along the national highway, attracting the attention of people from all spheres of Indian society. They walked with the knowledge that they had worked for a generation to build the movement and create the capacity to claim their rights. Support flowed in, with 250 participants from international organizations walking in solidarity, more than 100 members of Parliament pledging support for Janadesh, and people from all over India expressing their support for the satyagrahis – the marchers who gained strength and “truth force” by putting their non-violence principles into action. After the marchers arrived at the capital, the Government reacted swiftly and promised to meet their demands, including the establishment of a National Land Reform Committee with 50% of the members coming from social movements and civil society organizations involved in the land rights movement.

The people who marched in the Janadesh created a powerful form of political action that they realized could be used to pressure the Government into action. Ekta Parishad mobilized its members and supporters on an unprecedented scale to claim their rights to land and livelihood and hold the Government accountable for delivering on a long-overdue promise for land reform. Since the 2007 Janadesh campaign, Ekta Parishad has continued to monitor the Government’s fulfillment of its promises and push for greater fulfillment of its human rights obligations. Building on the success of the Janadesh campaign, Ekta Parishad is preparing for an international march in October 2012, the Jan Satyagraha March (“People’s March for Justice”) in which 100,000 people will again walk 350 kilometers to the capital and in addition parallel actions will take place in 60 countries around the world. Ekta Parishad has gained strength and clarity as its main focus has emerged: the mobilization of people for economic and social justice.<sup>xv</sup>

### ***E. Diverse and Dynamic Field of Potential Grantees***

The field of ESC rights is large, diverse and uneven in its development. It contains a wide array of actors – human rights NGOs, development organizations and social movements – that work on ESC rights from different angles providing strength and dynamic energy to the field. For human rights groups, the strengthening of ESC rights has deepened their capacity to tackle systemic issues – the causes and conditions of

poverty – that create and sustain ongoing human rights violations. For development organizations, there is a resonance between the issues covered by ESC rights – including the right to education, health, food and water – and the needs addressed by a broad range of social justice and development mandates.

Many ESC rights NGOs share a strong organizational imperative to work in partnership with social movements and grassroots communities. When they work well, such partnerships can yield dramatic results that not only advance the communities' economic and social rights struggles, but help them grow stronger to advocate on behalf of their own issues. Under this model, NGOs support the needs of communities suffering violations and act as catalyst, trainer and technical resource. A distinguishing characteristic of the ESC rights field is its strong base in and connection to grassroots social movements. This connection is a strength of the field but also an area that needs additional support given the challenges inherent in developing strong, productive and equitable partnerships.

Currently, some of the most innovative work and results are being achieved by national-level ESC rights organizations in a limited number of countries and a few specialized international ESC rights NGOs. With support, these national-level groups have the potential for greater national and regional impact. They are leading the development of tools and strategies for advancing the implementation of ESC rights. At the international level, the field is small, but growing. Funders can play a key role in building a solid foundation for this emerging field. Moreover, since the field of ESC rights has been under-resourced to date, funders have the opportunity to achieve significant impact with small grants. Please see the Appendix for a partial list of potential grantees.

## **IV. Strategies for Funding**

With this moment of opportunity for moving the field of ESC rights forward, funders can play a critical role in enhancing its impact and realizing greater fulfillment of ESC rights for poor and marginalized communities around the world. There are many different strategies and approaches that funders could employ to advance ESC rights. Three recommended strategies for funding ESC rights are:

- advancing the protection of substantive rights;
- developing and strengthening tools; and
- building the field.

### ***A. Advancing the Protection of Substantive Rights***

In light of the nascent development of the field of ESC rights, funders – as well as activists and practitioners – have tended to approach the field as a whole and support the full range of ESC rights as opposed to targeting a specific issue or right. A broad approach is flexible and comprehensive, mirroring the way most groups work and responding to the range of human rights violations that communities and individuals experience. In addition, an approach that is open to the whole range of ESC rights has enabled activists and donors to take advantage of opportunities in the field where they arise quickly and unexpectedly. A broad ESC rights approach remains a good option

for donors, particularly for those with more understanding of ESC rights and familiarity with the field.

### **Recognition of the Right to Water**

The right to water is a relatively new area of work within the ESC rights field, and yet in a short time it has generated a lot of momentum. In 2002, the UN Committee on ESC Rights adopted a General Comment on the Right to Water which NGOs used as a springboard for expanding monitoring, advocacy and litigation in this area. ESC rights organizations came together with social movements and international partners to leverage the opening created at the international level to advance protection of the right to water for communities on the ground, such as the Phiri community in South Africa.

The Coalition Against Water Privatization (CAWP), a South African social movement, began organizing among the residents of Phiri, one of Soweto's poorest townships, in response to the introduction of pre-paid water meters by the Johannesburg Water Authority. The new system was seen as financially onerous for the poor, and would prevent many from receiving even the basic minimum of 50 litres of water per day as prescribed by the World Health Organization. The Centre for Applied Legal Studies (CALS) worked with CAWP to bring a class-action suit on behalf of the residents of Phiri. The Centre on Housing Rights and Evictions (COHRE), an international ESC rights NGO, filed an amicus in support of the case, drawing upon its research of the emerging standards related to the right to water. In May 2008, the High Court of South Africa ruled in favor of the residents, affirming that the case is about "the fundamental right to have access to sufficient water and the right to human dignity." Although the Constitutional Court of South Africa subsequently overturned the decision, the case created an opening in the field and propelled new work on the right to water globally.<sup>xvi</sup>

Now that the field of ESC rights is maturing, other options for advancing specific economic and social rights present themselves. One approach is to target those specific rights that have reached a "critical mass" in their level of development and practice such that a new level of impact could be achieved if strategic support were given. There is an opportunity for greater traction with respect to four substantive rights: housing, health, food and education.

Each of these rights has a high level of normative development which means a more defined and elaborated set of standards and interpretations. This body of standards helps in applying them in new contexts. In addition, each of these rights is supported by strong national level groups working on each of these rights as well as specialized international NGOs. When they partner on projects, a wide range of positive impacts is generated that advances the specific case or action, expands the realm of practice, and builds additional local capacity which in turn strengthens the field. Finally, each of these rights has benefited from an influential Special Rapporteur who has played a catalytic role in developing the content of the right as well as engaging with NGOs to push for greater state accountability.

The rights to housing, health, food and education each have reached a significant level of normative development with a growing set of best practices to inform implementation. The critical next step is to provide the necessary support in order to translate these standards and strategies into campaign wins on the ground. With targeted funder support, there is potential to achieve much greater impact in each of these important issue areas.

## **1. *Right to Housing***

The right to housing has obligations of immediate effect – a prohibition on forced evictions – as well as obligations subject to progressive realization that can be advanced more systematically over time. Therefore, a strategy that focuses on the right to housing has the benefit of offering a range of starting points: from urgent actions spotlighting mass forced evictions to contesting discrimination in housing policies to advocating for affordable housing programs. Forced evictions provide a strong point of entry because they are clear cases that often involve egregious human rights violations and affect the most marginalized and vulnerable communities. Even in countries where there is not a recognized right to housing, there is an opportunity to work on securing procedural protections, including the provision of adequate notice, and moving forward from there to expand the recognition of international standards at the local level.

## **2. *Right to Health***

The right to health is concerned not only with what a health system *does* (such as provide access to essential medicines or safe drinking water) but also with *how* it is done (in a transparent and participatory manner and without discrimination). As work on the right to health has deepened, there has been a greater push toward translating the human rights standards into the design and functioning of health systems to ensure protection and promotion of the right to health (as opposed to using standards only to identify violations once they have occurred). At the same time, a health and human rights movement is developing, which extends beyond traditional human rights groups to include health service providers, development organizations, women's rights groups and patients groups. In addition, the maturation of the work in this area is reflected in a new understanding of critical health problems, such as HIV/AIDS and maternal mortality, moving them beyond public health issues to be managed to human rights violations to be addressed. Each of these developments has opened up new areas of work on a larger scale, and created the need and opportunity for new strategies and support.

## **3. *Right to Food***

The right to food provides a legal guarantee of food security as well as a guarantee of access to productive resources (including land and natural resources) so that people are able to feed themselves. The right to food is threatened typically in cases with:

- large development projects, such as dams or industrial development, that evict or relocate communities whose livelihood is linked to the land;
- trade liberalization agreements which cause economic dislocation and violation of the right to food, especially for small farmers; and
- government policies that exacerbate food insecurity.

There is substantial crossover between the right to food – in terms of thematic focus and constituent support – and other areas of civil society action such as trade and investment, peasant and small farmer movements, and land rights. These linkages create opportunities for partnership and for funding across sectors that draw on these synergies. For example, many national level human rights groups have articulated a need to develop the capacity to monitor trade agreements, particularly agricultural agreements. With this knowledge, national level human rights groups and social

movements could partner to identify strategic openings for advocacy that would enhance the protection for the right to food for subsistence communities.

#### **4. Right to Education**

The right to education is one of the most established ESC rights and has a corresponding high level of normative development. In contrast to the rights to health and housing, however, there has not been a critical mass of ongoing NGO programmatic work within the international human rights world on the right to education. Recently, international development organizations with a proactive rights-based approach have taken an active role in advancing the right to education, including revitalizing a global campaign on education. This leadership coupled with a base of well-established standards and legal recognition provides a promising platform for future advocacy.

##### **Achieving Access to Medicine in Venezuela: Making a claim that leads to policy change**

In Venezuela in 1999, a group of people living with HIV/AIDS filed a constitutional claim against the Health and Assistance Ministry for its refusal to make antiretroviral drugs available at no cost to those who could not afford treatment. They argued that the Ministry's refusal violated their rights to life and health, enshrined in the Venezuelan Constitution as well as the International Covenant on Economic, Social and Cultural Rights. The Constitutional Court ordered the Ministry to supply the antiretrovirals regularly and to develop a treatment and assistance program for people living with HIV/AIDS. Ultimately, the decision triggered a broad change in Venezuela's health policy, ensuring access to antiretrovirals for those who could not afford them. This is one of a number of important victories in different countries - including South Africa, Brazil and India - that has propelled an international movement on the right to health and access to medicine that has saved many lives around the world.<sup>xvii</sup>

### **B. Developing and Strengthening Tools**

Another option for funders is to target support for developing new tools and strengthening existing ones. In recent years, great strides have been made in strengthening key tools such as legal strategies, public policy analysis and international mechanisms. At the same time, dramatic innovation in the field has produced a set of new tools aimed at measuring and monitoring the progressive realization of ESC rights, such as budget analysis and indicators. Together, a powerful new set of tools is increasingly available to activists and practitioners, further transforming the field and producing concrete and positive change for communities on the ground.

#### **1. Strengthen Domestic Adjudication**

The most effective protection of ESC rights – as well as all international human rights – is domestic enforcement. There are a number of ways to strengthen domestic adjudication of ESC rights. At the country level, the combination of strategies are best determined in consultation with local human rights activists and practitioners so the approach can be tailored to fit that particular country's needs and set of current opportunities.

## **Support Strategic Litigation**

An important piece of any broad strategy for strengthening enforcement of ESC rights is support for strategic litigation in domestic courts. As capacity among human rights lawyers and activists is amassed and a strategy for legal protection of ESC rights develops, the possibility opens up of bringing a case that can set a precedent. This tool is best used in a national context where there are strong human rights organizations, including public interest law organizations which can take the litigation forward and social movement or NGO partners which can provide mobilization and advocacy to ensure implementation.

To further strengthen domestic adjudication, funders can support capacity-building at the national level to raise awareness among civil society advocates of international standards and gain facility with using them in advocacy work. In addition, funders can support the development of informational resources and materials which provide an important basis for knowledge-building and strategy exchange amongst lawyers, practitioners and activists in different countries and working at different levels.

## **2. *Leverage International Mechanisms***

Although the focal point for protection of ESC rights is within the domestic system, the international human rights system can play an important complementary role in contributing toward that outcome. Human rights activists can employ different mechanisms available through the UN and regional systems to pressure governments to fulfill their human rights obligations. Several key mechanisms that are experiencing an upsurge in use by civil society advocates have the potential for greater impact: Special Rapporteurs, Alternative or Parallel Reporting, and Complaint Mechanisms including the Optional Protocol.

One important point echoed by NGO activists as well as experts within the UN system: the most effective use of international mechanisms is achieved when coupled with a strong follow-up strategy for advocacy at the country level. The international system, drawing upon its technical expertise, credibility and institutional weight, can provide clarification on violations as well as recommendations for action that produce a powerful indictment or platform for change. However, the best way to ensure implementation is to have a multi-prong strategy at home for keeping those findings and recommendations in the spotlight and utilizing domestic avenues for systemic change. An NGO strategy for domestic advocacy is critical to the successful use of special procedures and alternative reporting. Funders can provide support to enhance the strategic use of international mechanisms to advance domestic ESC rights protection.

### **Special Rapporteurs**

One of the best known and widely used Special Procedures to the UN Human Rights Council is the thematic mandates of the Special Rapporteurs. Housing, health, food and education each have a Special Rapporteur dedicated to advancing the conceptual development of the right as well as enhancing avenues of protection. Special Rapporteurs can have an active influence on the priority given by a government to observing its ESC rights obligations through a well-planned country visit. This is



particularly true when a country visit is combined with a powerful report and set of recommendations, interaction and agenda-setting by civil society, and the use of media.

Overall, the Special Rapporteurs with ESC rights mandates have been proactive and effective; yet, they are under-resourced. Funders could have a significant impact on the advancement of the field as well as the fuller realization of specific rights by supporting the work of the Special Rapporteurs. In addition, funders could provide strategic support to NGOs at the national level to take the momentum created by a country visit forward and engage in sustained follow-up advocacy.

### **Alternative or Parallel Reporting**

One of the most important international mechanisms available to ESC rights activists is the use of alternative or parallel reporting to the Committee on ESC Rights. States who are parties to the ICESCR must report periodically on their progress in protecting and promoting ESC rights. As part of that process, NGOs can submit an alternative report. In general, the Committee has been open to NGO input and in turn uses it to inform their “dialogue” with governments as well as to push for specific outcomes.

One positive trend that has emerged is an increase in the formation of national-level coalitions in order to submit an alternative report to the Committee, most recently in Kenya, India, Brazil and the Philippines. The joint reports are strengthened by the contribution of each of the NGOs’ different areas of expertise and ties to different communities within the country. In several instances, the coalitions have continued to work together after the Committee session to follow-up on the concluding observations and to advance their ESC rights agenda more broadly at the domestic level. The formation of national-level coalitions in tandem with parallel reporting is a powerful tool. With funder support, it could be used to advocate for and achieve greater protection of ESC rights at the country level as well as enhance the impact of an important international mechanism.

Additionally, ESC rights have increasingly been brought before other UN treaty-monitoring bodies using the principle of indivisibility of rights and the prohibition on discrimination. For instance, the Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights, has recently found violations of that Covenant in the context of housing and access to water. This work has thereby resulted in mainstreaming ESC rights throughout the human rights enforcement mechanisms at the international level -- opening additional avenues for redress of violations of ESC rights.

### **Optional Protocol**

The culmination in 2008 of a successful campaign for the Optional Protocol to the ICESCR was a major victory and has added a potentially powerful new tool to the field. Now, as the next phase of work on the OP is underway, funders can play a key role in continuing the momentum created by the campaign to ensure the development of a strong enforcement mechanism for ESC rights. Most immediately, there is the need to organize national-level ratification campaigns to educate the public and lobby governments in support of the OP. Amongst ESC rights activists and practitioners, there is also recognition of the longer-term need to identify and bring good precedent-setting cases to the OP. Although it will take a number of years for any case to exhaust

domestic remedies, it is crucial to have a process for identifying good cases, providing support to develop them, and guiding them through the system.

### **3. *Scale-Up Budget Analysis and Participatory Budgeting***

Much progress has been made in developing budget analysis techniques to assess a government's compliance with its human rights obligations in concrete ways using data. Budget analysis is a promising new tool with a lot of untapped potential. However, its rollout has been relatively slow due to capacity constraints. A relatively high level of technical knowledge is required in two fields – budget analysis and ESC rights – in order to apply the techniques and relate the relevant standards in sufficient detail. This knowledge threshold has affected the rate of development of the actual tool. In addition, it has meant there is a relatively small pool of people and organizations with the capacity to do the conceptual development and undertake the applied work. With strategic support, these constraints could be addressed in an accelerated way that would allow the necessary building of capacity and resources to scale-up the use of budget analysis. Funders could support the development of more learning programs; resource materials and guides; cadre of trainers; and ongoing technical assistance.

### **4. *Develop Indicators***

In recent years, several initiatives have arisen aimed at using more quantitative tools and an understanding of the economic framework for monitoring the protection and progressive realization of ESC rights. Similar to the genesis of budget analysis, the focus on indicators is fueled by a desire to explore options for a more concrete set of tools that can be used in an “objective” way to measure a government's fulfillment of their ESC rights obligations. Indicators seek to translate human rights standards into operational and measurable variables. For example, the Inter-American Commission on Human Rights has developed ESC rights indicators that governments can use to report under the San Salvador Protocol as well as to guide the design and implementation of government policy. The development of indicators is a tool worth investing in further, although it most likely requires patient support. Indicators hold the potential of adding yet another powerful tool to a diverse and complementary array of tools and strategies for the protection and promotion of ESC rights.

### **5. *Support Public Policy Analysis and Advocacy***

ESC rights-based policy analysis coupled with advocacy is one of the more established – and powerful – strategies that funders can support for securing economic and social rights protections for large groups of people. Given the affinity between ESC rights and social and economic policy, policy analysis is a natural and versatile tool, which offers the possibility of systemic change when used successfully. Over time, as the normative content of ESC rights has been further elaborated, the policy approach has gained more strength and applicability because the standards used in designing human rights-based policies are more detailed, offering greater guidance as well as measures for assessment. Recently, public policy analysis has gathered new potency as a range of tools and techniques are being advanced, such as indicators and benchmarks, human rights impact assessments and other methodologies for human rights monitoring and assessment. The ability to monitor human rights outcomes and impacts creates a valuable method for assessing the success or failure of a particular policy to protect and

fulfill ESC rights. Together, these developments have created an important opening for funders to support a multi-disciplinary approach to ESC rights-based policy analysis and advocacy linked to other monitoring tools and techniques.

### **Protecting Roma Children's Right to Education in the European Court of Human Rights**

The Roma community throughout Europe lives mostly on the outskirts of mainstream society, and is subject to significant discrimination, resulting in the denial of housing, healthcare, education and employment. Roma are often subject to racially-motivated attacks and forced evictions. The discrimination extends to Roma children and affects their access to education, and by extension their employment and life opportunities. A widespread practice of placing Roma students into special schools for children with learning disabilities on the basis of language proficiency exists in many countries in Eastern and Central Europe. The practice of segregating Roma children has been challenged by the European Roma Rights Centre (ERRC) and other groups, combining strategic litigation with the use of statistics and public policy analysis.

The European Court of Human Rights has decided several groundbreaking cases in recent years – including *D.H. v the Czech Republic* (November 2007) and *Orsus v Croatia* (March 2010) – establishing that the segregation of Roma children into separate classes and schools based on language differences violates a prohibition on discrimination (Article 14) of the European Convention on Human Rights as well as the right to education (Article 2 of Protocol 1). The Convention allows for temporary separate placement of students as long as safeguards are in place to ensure proper assessment and a plan for integrating children into mainstream education. However, these conditions were not met; instead the Court found a pattern of discrimination. Given the history of discrimination against Roma in Europe, segregation based on language risks perpetuating a cycle of social exclusion through substandard or remedial separate education. The Court decisions provide a major victory in recognizing the barriers that exist to realizing the right to education for Roma children and ordering their removal. With these groundbreaking cases, a new phase of work is ushered in as groups push to ensure enforcement.<sup>xviii</sup>

## ***C. Building the Field***

The field is large and diverse in terms of the number and types of organizations working on ESC rights. However, there is an uneven distribution of groups with widely varying capacity. There are a number of well-established ESC rights NGOs at the national level, but they cover a limited number of countries. This in turn means that there are many countries where there is a small base of ESC rights practice at present, and regions where the work has significant untapped potential. By contrast, there is a small but growing pool of countries with a “critical mass” of ESC rights activity supported by multiple civil society organizations.

There is a need to strengthen the field generally at an international level. This can be accomplished through a two-pronged approach: build the capacity of key organizations, and develop new resources in tandem with targeted training programs. To achieve the maximum benefit, the training programs should tap into the existing knowledge in countries with robust ESC rights movements and connect it to those countries – and communities of practice – with less developed ESC rights advocacy. Each of these

strategic aims is an important element of the field-building approach and each in turn helps to reinforce and strengthen the other.

### ***1. Strengthen Key Organizations***

One strategy for building the field internationally is to provide a more secure operating base and expanded programmatic capacity for existing anchor NGOs. Building key organizations would also provide the necessary resources to support “innovator” organizations which are at the forefront of developing new methodologies, tools and partnership models for advocacy. This should increase the impact of NGOs with established track records and insulate them against staffing changes.

In addition to anchor organizations, the field of ESC rights periodically experiences waves of innovation – in terms of tools and ways of working – brought on by the introduction of new organizations to the field. The development of budget analysis as a new tool or the new models of partnership that build the advocacy capacity of social movements provide two good examples. Therefore, support for new “innovator” NGOs is a second and complementary element of strategic support which can strengthen the impact of the field.

### ***2. Develop Informational Resources Linked to Capacity-Building***

There is a need for the strategic development and use of informational resources to build the capacity of groups and practitioners working in the field. Even when there are victories in the field or innovations in practices, it is difficult to learn about them in any depth that enables another group to adopt the same strategy or approach. In recent years, there has been greater documentation of legal strategies which has enhanced adjudication.<sup>xix</sup> However, there is a need for more informational resources across the whole field, and where possible to link these resources to workshops, trainings, and exchanges that allow groups to gain hands-on experience. The development of resources in this way would contribute toward enhanced capacity in the field and advocacy outcomes.

## V. Appendix: Partial List of ESC Rights Organizations

*This is a partial list of organizations working in the field of ESC rights. It is not intended to be a comprehensive or exhaustive list, but meant to provide a brief profile of a sampling of NGOs with an explicit focus on ESC rights working at the national, regional or international level. There are many organizations that work to advance ESC rights, such as development organizations, that are not listed here given time and space constraints in compiling the Funder's Guide. Furthermore, there are many countries and regions which are not represented in the partial listing. If you would like to submit information on an organization working on ESC rights (or to revise information presented here on an NGO), please send information to Daria Caliguire at [daria.caliguire@gmail.com](mailto:daria.caliguire@gmail.com)*

### A. ESC Rights NGOs – National and Regional

#### **1. Africa**

- *Kenya*

Hakijamii: Economic and Social Rights Centre, Kenya

[www.hakijamii.org](http://www.hakijamii.org)

Kenya Human Rights Commission (KHRC), Kenya

[www.khrc.or.ke](http://www.khrc.or.ke)

Kituo Cha Sheria (KCS), Kenya

[www.kituochoasheria.or.ke](http://www.kituochoasheria.or.ke)

- *Nigeria*

Social and Economic Rights Action Center (SERAC), Nigeria

[www.serac.org](http://www.serac.org)

Socio Economic Rights Initiative (SERI), Nigeria

[www.seri-escr.org](http://www.seri-escr.org)

- *South Africa*

Centre for Applied Legal Studies (CALS), South Africa

[www.wits.ac.za/Academic/Centres/CALS/CALShome.htm](http://www.wits.ac.za/Academic/Centres/CALS/CALShome.htm)

Legal Resources Centre (LRC), South Africa

[www.lrc.org.za](http://www.lrc.org.za)

Socio-Economic Rights Institute of South Africa (SERI), South Africa

[www.seri-sa.org](http://www.seri-sa.org)

Socio-Economic Rights Project, Community Law Centre (CLC), South Africa

[www.communitylawcentre.org.za/Socio-Economic-Rights](http://www.communitylawcentre.org.za/Socio-Economic-Rights)

#### **2. Latin America**

- *Argentina*

Asociación Civil por la Igualdad y la Justicia (ACIJ), Argentina

[www.acij.org.ar](http://www.acij.org.ar)

Centro de Estudios Legales y Sociales (CELS), Argentina

[www.cels.org.ar](http://www.cels.org.ar)

- *Brazil*

Terra de Direitos, Brazil

[www.terradedireitos.org.br](http://www.terradedireitos.org.br)

- *Colombia*

Centro de Estudios de Derecho, Justicia, y Sociedad (Dejusticia), Colombia

[www.dejusticia.org](http://www.dejusticia.org)

Comisión Colombiana de Juristas (CCJ), Colombia

[www.coljuristas.org](http://www.coljuristas.org)

- *Ecuador*

Centro de Derechos Económicos y Sociales (CDES), Ecuador

[www.cdes.org.ec](http://www.cdes.org.ec)

- *Mexico*

Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro PRODH), Mexico

[www.centroprodh.org](http://www.centroprodh.org)

Comision Mexicana de Defensa y Promocion de los Derechos Humanos, Mexico

[www.cmdpdh.org](http://www.cmdpdh.org)

DECA Equipo Pueblo, Mexico

[www.equipopueblo.org.mx](http://www.equipopueblo.org.mx)

FUNDAR: Centro de Analysis y Investigacion (FUNDAR), Mexico

[www.fundar.org.mx](http://www.fundar.org.mx)

- *Peru*

Asociacion pro Derechos Humanos (APRODEH), Peru

[www.aprodeh.org.pe](http://www.aprodeh.org.pe)

Centro de Asesoría Laboral de Peru (CEDAL), Peru

[www.cedal.org.pe](http://www.cedal.org.pe)

- *Venezuela*

Programa Venezolano de Educacion-Accion en Derechos Humanos (PROVEA), Venezuela

[www.derechos.org.ve](http://www.derechos.org.ve)

- *Regional*

Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo

[www.pidhdd.org](http://www.pidhdd.org)

### **3. Asia**

- *India*

Habitat International Coalition, South Asia Program (HIC-SARP), India

[www.hic-sarp.org](http://www.hic-sarp.org)

Human Rights Law Network (HRLN), India

[www.hrln.org](http://www.hrln.org)

Programme on Women's Economic, Social and Cultural Rights (PWESCR), India

[www.pwescr.org](http://www.pwescr.org)

- *Thailand*

Asian Forum for Human Rights and Development (FORUM ASIA), Thailand

[www.forum-asia.org](http://www.forum-asia.org)

Asian Institute for Human Rights (AIHR), Thailand

[www.aihr.info](http://www.aihr.info)

Asia Pacific Forum for Women, Law and Development (APWLD), Thailand

[www.apwld.org](http://www.apwld.org)

International Women's Rights Action Watch Asia Pacific (IWRAP-AP), Malaysia

[www.iwraw-ap.org](http://www.iwraw-ap.org)

### **4. North America**

- *Canada*

Centre for Equality Rights in Accommodation (CERA), Canada

[www.equalityrights.org](http://www.equalityrights.org)

Social Rights Advocacy Centre (SRAC), Canada

[www.srac.org](http://www.srac.org)

- *United States*

National Economic and Social Rights Initiative (NESRI), USA

[www.nesri.org](http://www.nesri.org)

The Poverty Initiative, United States

[www.povertyinitiative.org](http://www.povertyinitiative.org)

## **5. Middle East**

- *Egypt*

Egyptian Initiative for Personal Rights (EIPR), Egypt

[www.eipr.org/en](http://www.eipr.org/en)

Egyptian Center for Housing Rights (ECHR), Egypt

[www.echr.org/en](http://www.echr.org/en)

## ***B. International ESC Rights NGOs***

Amnesty International (AI), United Kingdom

[www.amnesty.org](http://www.amnesty.org)

Center for Economic and Social Rights (CESR), United States and Spain

[www.cesr.org](http://www.cesr.org)

Centre on Housing Rights and Evictions (COHRE), Switzerland

[www.cohre.org](http://www.cohre.org)

Conectas, Brazil

[www.conectas.org](http://www.conectas.org)

Dignity International, Malaysia

[www.dignityinternational.org](http://www.dignityinternational.org)

La Fédération internationale des ligues des Droits de l'Homme (FIDH), France

[www.fidh.org](http://www.fidh.org)

FoodFirst Information and Action Network (FIAN), Germany

[www.fian.org](http://www.fian.org)

Interights, United Kingdom

[www.interights.org](http://www.interights.org)

International Commission of Jurists (ICJ), Switzerland

[www.icj.org](http://www.icj.org)

International Human Rights Internship Program (IHRIP), United States

[www.iie.org/ihrp](http://www.iie.org/ihrp)

International Network for Economic, Social and Cultural Rights (ESCR-Net), United States

[www.escr-net.org](http://www.escr-net.org)

World Organization Against Torture (OMCT), Switzerland

[www.omct.org](http://www.omct.org)

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## References

<sup>i</sup> Chronic Poverty Research Centre, 2008, *Chronic Poverty Report 2008-09*.

<sup>ii</sup> Millennium Development Goals Report 2009.

<sup>iii</sup> National Center on Family Homelessness, 2009 Study, America's Youngest Outcasts: State Report Card on Child Homelessness.

<sup>iv</sup> Millennium Development Goals Report 2009.

<sup>v</sup> Ibid.

<sup>vi</sup> UNDP, 2008, *Fast Facts*.

<sup>vii</sup> UNDP, 2008, *Fast Facts*.

<sup>viii</sup> USDA *Profile of Hired Farmworkers*, 2008.

<sup>ix</sup> This case study drew on information from and is indebted to the Coalition of Immokalee Workers ([www.ciw-online.org](http://www.ciw-online.org)), National Economic and Social Rights Initiative ([www.nesri.org](http://www.nesri.org)), RFK Center for Justice and Human Rights ([www.rfkcenter.org](http://www.rfkcenter.org)), and the publication, *Perfecting Our Union: Human Rights Success Stories from Across the United States* by the U.S. Human Rights Fund, 2010, ([www.ushumanrightsfund.org](http://www.ushumanrightsfund.org)).

<sup>x</sup> This case study drew on information from and is indebted to the Right to Food Campaign ([www.righttofoodindia.org](http://www.righttofoodindia.org)), PUCL ([www.pucl.org](http://www.pucl.org)), HRLN ([www.hrln.org](http://www.hrln.org)), amongst others.

<sup>xi</sup> This case study drew on information from and is indebted to the Treatment Action Campaign ([www.tac.org.za](http://www.tac.org.za)), Legal Resources Centre ([www.lrc.org.za](http://www.lrc.org.za)), AIDS Law Project (now incorporated into Section 27, an NGO, [www.alp.org.za](http://www.alp.org.za)), amongst others.

<sup>xii</sup> This case study drew on information from and is indebted to Kituo Cha Sheria ([www.kituochasheria.org.ke](http://www.kituochasheria.org.ke)), Centre on Housing Rights and Evictions ([www.cohre.org](http://www.cohre.org)), amongst others.

<sup>xiii</sup> This case study drew on information from and is indebted to Alicia Yamin, Harvard School of Public Health, Amnesty International ([www.amnesty.org](http://www.amnesty.org)), Realizing Rights: the Ethical Globalization Initiative ([www.realizingrights.org](http://www.realizingrights.org)), Oxfam GB ([www.oxfam.org.uk](http://www.oxfam.org.uk)), Unicef ([www.unicef.org](http://www.unicef.org)), and DFID Health Resource Centre ([www.dfidhealthrc.org](http://www.dfidhealthrc.org)).

<sup>xiv</sup> This case study drew on information from and is indebted to FUNDAR ([www.fundar.org.mx](http://www.fundar.org.mx)) and the International Human Rights Internship Program ([www.iie.org/ihrip](http://www.iie.org/ihrip)).

<sup>xv</sup> This case study drew on information from and is indebted to Ekta Parishad ([www.ektaparishad.com](http://www.ektaparishad.com)) and in particular Ramesh Sharma with Ekta Parishad.

<sup>xvi</sup> This case study drew on information from and is indebted to the Coalition Against Water Privatization ([www.apf.org.za](http://www.apf.org.za)), Centre for Applied Legal Studies ([www.wits.ac.za](http://www.wits.ac.za)), Centre for Housing Rights and Evictions ([www.cohre.org](http://www.cohre.org)), Unitarian Universalist Service Committee ([www.uusc.org](http://www.uusc.org)), amongst others.



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xvii This case study drew on information from and is indebted to Provea ([www.derechos.org/ve](http://www.derechos.org/ve)), the International Network for Economic, Social and Cultural Rights ([www.escr-net.org](http://www.escr-net.org)) case law database, amongst others.

xviii This case study drew on information from and is indebted to European Roma Rights Centre ([www.errc.org](http://www.errc.org)), Interights ([www.interights.org](http://www.interights.org)), Amnesty International ([www.amnesty.org](http://www.amnesty.org)), the Right to Education Project ([www.right-to-education.org](http://www.right-to-education.org)), amongst others.

xix There are a number of case law databases as well as publications on justiciability of ESC rights that are aimed at litigators and practitioners, which include: ESCR-Net Case Law Database; *Housing & ESC Rights Law Quarterly* and other publications by COHRE; *Courts and the Legal Enforcement of Economic, Social and Cultural Rights* (2008) and other publications by ICJ; Interights Human Rights Case Law Database; and *Social Rights Jurisprudence* (2009) by Malcolm Langford.