



The Global Initiative

for Economic, Social and Cultural Rights

Economic, Social and Cultural Rights at the 27th session of the Human Rights Council 8 – 26 September 2014

At the 27th session of the Human Rights Council economic, social and cultural (ESC) rights featured less prominently than the last session but there were quite a number of broader issues discussed that impact significantly on ESC rights.

This session was notable for being the first Human Rights Council session for the new UN High Commissioner for Human Rights, Mr Zeid Ra'ad Zeid al-Husseini. The in-coming High Commissioner gave an interesting speech (see [here](#)) which began with a rather philosophical consideration of human nature, cruelty and courage and paid tribute to Navi Pillay the former High Commissioner. He focused more on conflict situations and 'situations of concern' such as Syria, Iraq, Israel/Palestine



and South Sudan than on ESC rights issues, although he did note the ESC rights impacts of a number of those conflicts. He also addressed concerns about, and the OHCHR's work on, accountability in respect of North Korea and Sri Lanka. The High Commissioner gave a welcome emphasis to improving implementation of recommendations of treaty bodies, special procedures mandate holders and UPR recommendations. It was also pleasing to hear his confirmation of the central role of civil society actors and the importance of ensuring their 'place at the table' in the Council's work and he condemned reprisals against those who engage with the UN.

Mr Al Hussein made strong comments on the Sustainable Development Goals (SDGs). He highlighted the opportunity in the next 12 months to ensure that the SDGs are grounded in human rights and do not repeat the inequality blind-spot of the MDGs. He said the SDGS must integrate 'rights relating to access to justice, personal security and an equal voice and right to participate in public affairs'. He also called for a new global partnership to create an enabling environment for the right to development, which will involve 'reducing existing inequities in global governance, and by aligning trade, finance and investment policy explicitly and systematically with human rights standards and principles'. Importantly, the High Commissioner urged efforts to construct an accountability framework for the SDGs, including measures of actions and omissions of both public and private actors and the participation of civil society actors.

In the second week of the Council the High Commissioner held a public meeting with civil society at which he gave short introductory remarks and then opened the floor to questions. Again, ESC rights were not paid a great deal of attention. A number of NGO representatives took the floor to welcome the new High Commissioner and ask questions. The majority of those questions were about country situations and the need for greater protections for human rights defenders.

From these and other initial interactions with the High Commissioner, it appears that he is less familiar with ESC rights issues (other than the SDGS, which he appears to be very conversant with)



The Global Initiative

for Economic, Social and Cultural Rights

than with human rights abuses in conflict situations and international criminal law issues. However, the High Commissioner seems very interested in working with civil society in all areas relevant to the work of his office and eager to hear of new and creative ways that he can influence States and other influential actors, including private and corporate actors.

Right to Water and Sanitation

The Special Rapporteur on the right to safe drinking water and sanitation presented her final report ([A/HRC/27/55](#)) to the Council addressing the issue of common violations of the human rights to water and sanitation. The Report affirms a comprehensive approach to violations and presents a typology of common violations with the aim of assisting States in identifying and preventing violations. It examines breaches of each of the obligations to respect, to protect, to fulfil, to refrain from discrimination, to ensure substantive equality and to ensure active, free and meaningful participation. It also addresses extraterritorial obligations. The report then emphasises that all these violations are justiciable and effective remedies must be available, which in practice means that States must ensure access to justice for victims of violations. Importantly, and in recognition of the fact that some States may find the topic of the report challenging, the Special Rapporteur emphasises her aim to take a constructive rather than combative approach and to engage in participatory dialogue with States to assist with the goal of prevention of violations.

This is an important Report for ESC rights more generally as it tackles head-on the often problematic approach taken to violations of ESC rights by many States which focus on violations of the obligation to respect (such as interferences with access to water) and ignore violations of the ‘positive’ obligation to fulfil ESC rights (ie. To take positive steps such as allocating appropriate resources). The latter category of obligations is frequently the category involving systemic violations that impact the largest numbers of people.

The comprehensive violations approach is equally applicable to other economic and social rights, and is supported by the language of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. As the Special Rapporteur points out this approach is key to addressing systemic and structural discrimination and inequalities.

The Special Rapporteur also presented to the Council her ‘Handbook for realising the human rights to safe drinking water and sanitation’ which is an Addendum to her Report ([A/HRC/27/55/Add.3](#)) and her 2 Country mission reports: Brazil ([A/HRC/27/55/Add.1](#)); and Jordan ([A/HRC/27/55/Add.2](#)).

The Global Initiative ESCR made an oral [statement](#) at the Council in support of the Report and thanking the Special Rapporteur for her excellent work in the mandate.





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

A large number of States took the floor during the Interactive Dialogue following the Special Rapporteur's presentation of her Report, to make generally supportive statements. A number of developing States emphasised the need to differentiate between States' willingness to comply with obligations and its capacity to do so and urged consideration of the right to development. It was great to hear India speak of its national policy on menstrual hygiene management, a topic that is



often avoided by States in the Council. India also, together with a number of developing States, asked about States' obligations of international cooperation, including in relation to transfer of effective technologies. A number of countries noted the importance of strong human-rights based goals on water and sanitation in the SDGs. Barbados and Tuvalu highlighted the impact on the rights to water and sanitation of climate change (scarcity, salt water inundation), particularly for small island developing

States. Another theme which was raised by a number of States (Switzerland, Egypt, Iraq (re ISIL), Norway (extractive industries), Venezuela) was the role of non-State actors and extra-territorial obligations.

The resolution on the human right to safe drinking water and sanitation (A/HRC/27/L.11/Rev.1) was presented by the traditional co-sponsors Germany and Spain. After 3 extensive negotiation meetings and much bilateral discussion, the resolution was eventually adopted without a vote with the US disassociating from pre-ambular paragraph 21 on the basis that the language used to define the rights to water and sanitation was based on views of the Committee on Economic, Social and Cultural Rights, is not contained in treaty law and does not represent a consensus position. The US also stated that it joined consensus on the understanding that it does not imply that it must comply with treaties it is not a party to and that the resolution does not pre-judge the continuing negotiations in relation to the post-2015 development agenda and the SDGs (and subject also to a number of other technical issues).

South Africa also made a statement in relation to this resolution noting that it hoped that the Council could work towards codification of the rights to water and sanitation under international human rights law. South Africa also stated that consensus on the resolution would have been easier had the co-sponsors used the right to development approach and that they do not agree with States using human rights as a conditionality for development cooperation.

The final resolution was not ground breaking and some strong language in the first draft was watered down in negotiations. Disappointingly, the full definition of the right was shortened and moved to the preambular paragraphs. A positive development was the inclusion of a paragraph about menstrual hygiene management and preambular paragraph 21 includes reference to 'socially and culturally acceptable' in relation to sanitation.



The Global Initiative

for Economic, Social and Cultural Rights

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of Hazardous Substances and Wastes

The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr Baskut Tuncak, presented his first report to the Human Rights Council (A/HRC/27/54). He was appointed in June 2014 and assumed his mandate on 1 August 2014, following the untimely passing of the former Special Rapporteur, Mr Marc Pallemert, who had held that position for under two years.

The report summarises the scope of the current mandate and presents a brief outline of the strategy and methodology of the Special Rapporteur's work and invited further dialogue with all stakeholders to allow him to refine his plans and approach. He notes:

Projections for the coming years show a continued growth of chemical production and use worldwide, including rapid acceleration in countries that may have less robust legal frameworks for chemicals management. This trend has implications for the environmentally sound management of all types of waste. In addition, it underscores the importance of the mandate....¹

The Special Rapporteur also states that his mandate includes consideration of: gaps in regulation of hazardous substances and waste; transnational corporations; and human rights defenders who are subject to human rights abuses and violations owing to their activities relating to the environmentally sound management and disposal of hazardous substances and wastes. He will focus 'particularly on the new dimensions added to the mandate since 2011, when it was strengthened to embrace a life-cycle approach to the environmentally sound management of hazardous substances and wastes'² and will prepare a guide to best practices, reporting back in one year.



During the Interactive Dialogue with the Special Rapporteur, a number of countries acknowledged the strong work of the former Special Rapporteur, Mr Pallemert, and expressed sadness at his passing. Côte d'Ivoire said that in the absence of an international binding instrument in this area, people were vulnerable to mismanagement of hazardous substances and wastes. Algeria also noted this regulatory gap. Côte d'Ivoire also called on States to adopt legislation to protect people and ensure that enterprises and corporations abided by national and international standards.

Mr Tuncak advised that his next report will be on the right of access to information as it relates to the environmentally sound management and disposal of hazardous substances and wastes.

A resolution on the mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ([A/HRC/27/L.13](#)) was adopted without a vote after some minor oral amendments. It was presented

¹ Para 10

² Para 16



The Global Initiative

for Economic, Social and Cultural Rights

by Ethiopia on behalf of the African Group. It was essentially a procedural resolution acknowledging the report of the new mandate holder, Mr Tuncak and extending the mandate of the Special Rapporteur for a further three years. The resolution also asks the Special Rapporteur to develop a 'guide to best practices regarding the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes'.

Vulture Funds

A resolution on the 'Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights: the activities of vulture funds' ([A/HRC/27/L.26](#)) was adopted by the Council by

vote (33Y:5N:9Ab). The main sponsor of the resolution was Argentina, which has a special interest in this issue given its on-going battle with so-called 'vulture fund' (also called distressed securities funds) NML Capital. NML Capital purchased Argentine sovereign debt

bonds at a very low price after the country's 2002 default and refused to participate in the terms of an agreement reached with over 92 per cent of its creditors in 2005 and 2010. NML Capital is now suing Argentina in US Courts. This is just one example of a problem facing many highly indebted poor countries, including at least 50 that are being pursued by vulture funds in national courts.

The vote split down Global South – North lines to some degree, although it was notable that Ireland, South Korea, Italy and France all abstained rather than voted against.

It follows on from the historic resolution adopted in the General Assembly's 68th session on 9 September entitled 'Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes' (68/304) which initiated a process for the negotiation of a treaty establishing a global bankruptcy or debt workout procedure. The GA resolution was adopted by vote with a large majority in favour (124Y:11N:41Ab). The proponents are hoping for a bankruptcy/restructuring process which would make it more difficult for hold-out investors to block countries restructuring their debts and prevent predatory creditors from making huge profits at the expense of poorer countries.

NGOs are also advocating for a fair and transparent international system for dealing with sovereign default that includes consideration of the human rights of citizens of the debtor nation. The Center for Legal and Social Studies (CELS), Centre on Economic and Social Rights and Center of Concern have argued for the need to:

Create an international mechanism that is neutral and independent, designed to resolve disputes concerning the restructuring of sovereign debt in accordance with the obligation of States to respect, protect and enforce human rights, both in their territories and





The Global Initiative

for Economic, Social and Cultural Rights

extraterritorially. Such a mechanism must be comprehensive and binding for all creditors, public and private, bilateral and multilateral and contemplate an immediate stay of all payments as of the initiation of proceedings. This mechanism should also make a determination about what constitutes a sustainable debt burden, taking into account the need to recover economic viability and ensure the population's human rights are met, and on that basis decide what level of restructuring is necessary. Such a mechanism should recognize that a sovereign debtor is different from a private debtor and provide opportunities for participation, accountability and transparency that encompass the debtor country's population.³

This HRC resolution welcomed the work of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights and his earlier report on vulture funds (see A/HRC/14/21). The resolution uses strong language in relation to the activities of vulture funds, the inequities in the global financial system and the ways in which vulture funds can undermine international debt relief efforts and the ability of States to realise the human rights of its citizens. It 'condemns the activities of vulture funds for the direct negative effect that the debt repayment to those funds, under predatory conditions, has on the capacity of Governments to fulfil their human rights obligations, particularly economic, social and cultural rights and the right to development' and 'encourages all States to participate in the negotiations aimed at establishing a multilateral legal framework for sovereign debt restructuring processes, as referred to in General Assembly resolution 68/304...'.³

It also requested the Advisory Committee to prepare a 'research-based report' on the activities of vulture funds and human rights.

Other resolutions of note

- ***Local government and human rights***

A resolution on 'Local government and human rights' (A/HRC/27/L.6) was adopted without a vote. The resolution was introduced by South Korea on behalf of a core group comprising Chile, Egypt and Romania. The resolution was a follow-up to resolution HRC/24/2 adopted by consensus at the 24th session. Resolution HRC/24/2 had asked the Advisory Committee to undertake a study on the role of local government and human rights. At this session the Advisory Committee presented to the Council a progress report on that study and this resolution simply requested the Advisory Committee to continue that work.

The study is very relevant to ESC rights since in many countries formulation and implementation of policies relating to ESC rights (eg: housing, health services, education) are undertaken at the level of local or municipal governments rather than national governments. All too often in treaty body reviews States excuse their non-compliance with human rights on the grounds that they are local government responsibilities.

³ See <http://cesr.org/article.php?id=1620>



The Global Initiative

for Economic, Social and Cultural Rights

This issue is also the subject of the next report of the Special Rapporteur on adequate housing which will be on 'responsibilities of governments at the sub-national level (state, provincial and municipal) in the implementation of the right to adequate housing.'

- **Resolution on sexual orientation and gender identity**

The Council also passed a resolution on sexual orientation and gender identity (A/HRC/27/L.27.Rev.1). This was a highlight of the session for many advocates working on SOGI issues and for the principal of universality of human rights, especially given that prior to the session it appeared that no country was prepared to put forward the resolution. It was the second resolution on the topic for the Council and had been three years since the first historic resolution on SOGI issues was adopted by the Council in June 2011. Many were concerned that if the Council did not follow-up that resolution very soon, the issue would

lose momentum at the Council.

L.27/Rev.1 Human rights, sexual orientation and gender identity		
ALGERIA	No	
ARGENTINA	Yes	
AUSTRIA	Yes	
BENIN	Yes	
BOTSWANA	Yes	
BRAZIL	Yes	
BURKINA FASO	Abst	
CHILE	Yes	
CHINA	Abst	
CONGO	Abst	
COSTA RICA	Yes	
COTE D'IVOIRE	Yes	
CUBA	Yes	
CZECH REPUBLIC	Yes	
ESTONIA	Yes	
ETHIOPIA	Yes	
FRANCE	Yes	
GABON	Yes	
GERMANY	Yes	
INDIA	Abst	
INDONESIA	Yes	
IRELAND	Yes	
ITALY	Yes	
JAPAN	Yes	
KAZAKHSTAN	Abst	
KENYA	Abst	
KUWAIT	Abst	
MALDIVES	Abst	
MEXICO	Yes	
MONTENEGRO	Yes	
MOROCCO	Abst	
NAMIBIA	Abst	
PAKISTAN	No	
PERU	Yes	
PHILIPPINES	Yes	
REP. OF KOREA	Yes	
ROMANIA	Yes	
RUSSIAN FEDERATION	Abst	
SAUDI ARABIA	Abst	
SIERRA LEONE	Abst	
SOUTH AFRICA	Yes	
THE FORMER YUG. REP. OF MACEDONIA	Yes	
UNITED ARAB EMIRATES	Abst	
UNITED KINGDOM	Yes	
UNITED STATES OF AMERICA	No	
VENEZUELA	Yes	
VIET NAM	Yes	

Yes 25 Abstention 7 No 14

Eventually Uruguay, Chile, Brazil and Colombia came forward proposing a text asking for two yearly reporting on SOGI issues to the Council. The final text adopted by vote with a comfortable majority (25Y:14N:7Ab) expressed 'grave concern' about violence and discrimination in all regions of the world committed against individuals because of their sexual

orientation and gender identity and asked the Office of the High Commissioner for Human Rights to update a 2012 study on this issue. The resolution was co-sponsored by 41 States but was hotly contested in informals and negotiations throughout the session. It was subject to seven hostile amendments at the time of voting (by Egypt on behalf of a group of ten States), but the final vote delivered a greater margin between those for and those against, than was the case for the previous resolution with a few encouraging changes of vote.

- **Report and resolution on the right development**

The Council adopted a resolution on 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' (A/HRC/27/L.3) by vote (42Y:1N:4Ab). The main (and traditional) sponsor was Iran on behalf of the Non-Aligned Movement group of States together with Brazil and China and, predictably, the US was the only State to vote 'No'.

The resolution did not contain normative or substantive material on the right to development. It took note of the OHCHR Report and requested it to continue to submit an annual report on its activities regarding the right to development. It welcomed the work of, and the report of the fifteenth session of, the Inter-Governmental Working Group on the Right to Development and in particular its development of criteria and operational sub-criteria on the right to development. The resolution reiterates the desire of supporters of



The Global Initiative

for Economic, Social and Cultural Rights

the right to development that its efforts proceed towards a set of standards for the implementation of the right to development which would then 'evolve into a basis for consideration of an international legal standard of engagement.' The resolution also acknowledges the need for 'improving the effectiveness and efficiency' of the Working Group.

Reflecting the continuing disagreement in the Council about the right to development, the EU made an 'explanation of vote' statement in which it reiterated that it is not in favour of the elaboration of an international legal standard of a binding nature and noted that fundamental differences in the understanding of the right to development remain, including in relation to issues such as indicators, the content of the right, its implications and appropriate instruments to realise the right.

The report of the Secretary-General and the High Commissioner for Human Rights on the right to development (A/HRC/27/27) was also presented to the Council at this session. It details the activities of the OHCHR in relation to the right to development in the past year. It includes a useful description of the Office's work on human rights and the financial crisis and on the post-2015 development agenda.

- ***Resolution on civil society space***

The resolution on civil society space (A/HRC/27/L.24) drew a great deal of attention and debate at this Council session as have similar resolutions in the Council and the General Assembly over the past few years. The resolve of NGOs and friends of civil society to push for a strong resolution protecting civil society space was emboldened following attempts during the first week of the Council by some States (eg: Egypt) to silence NGOs through procedural 'points of order' during NGO oral statements.

The resolution was eventually adopted by consensus with 53 co-sponsors, but following an extraordinary ten hostile amendments that attempted to water down the protections. The hostile amendments were put by Bahrain, China, Egypt, India, South Africa (very disappointingly), Russia, UAE and Venezuela and all were rejected in a vote (or withdrawn). The final text of the resolution which was described by rights groups as achieving 'modest progress':

- urges States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity;
- emphasises the importance of civil society space for empowering persons belonging to minorities (and with minority views) and vulnerable groups; addresses restrictions on funding to civil society;
- urges States to ensure access to justice, accountability and end impunity for human rights violations and abuses against civil society actors; and



The Global Initiative

for Economic, Social and Cultural Rights

- requests the High Commissioner to prepare a compilation of practical recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lessons learned.

See this interesting [article](#) by Michael Ineichen of ISHR which provides a more positive take on the apparent polarisation of views at the Human Rights Council in this and many other areas.

- President of the HRC issued a Statement on the Ebola epidemic which was adopted without a vote (A/HRC/27/L.55).

Global Initiative for Economic, Social and Cultural Rights

www.globalinitiative-escr.org

October 2014