



The Global Initiative

for Economic, Social and Cultural Rights

31st session of the UN Human Rights Council

29 February to 24 March 2016

This Update aims to provide a summary of the initiatives regarding economic, social and cultural (ESC) rights at the 31st session of the Human Rights Council (March 2016). It provides information on most initiatives on ESC rights and more detailed information and analysis on those initiatives the GI-ESCR followed more closely (right to work, right to adequate housing, economic, social and cultural rights resolution, 50th Anniversary of the Human Rights Covenants, human rights and the environment).

Right to work

Pursuant to last year's Human Rights Council resolution on the right to work, the OHCHR produced a report (A/HRC/31/32) which provides a broad overview of the right to work. The report outlines the normative recognition of the right to work, analyses the elements of the right and includes a strong focus on non-discrimination. It notes the gap between reality and the normative standards on the right to work which, it says, demonstrates the need to strengthen protection and implementation.

Resolution

This is the 2nd year that this resolution on the right to work ([A/HRC/RES/31/15](#)) has been put forward by the core group of Egypt, Mexico, Greece, Indonesia and Romania. The resolution, which was adopted without a vote, takes note with appreciation of the report of the OHCHR and requests a further analytical report for the March 2017 session of the Council on the topic of ~~the~~ the relationship between the realization of the right to work and the enjoyment of all human rights **by women**, with a particular emphasis on the empowerment of women and the relevant major challenges and best practices in that regard.

The resolution repeats many of the paragraphs from last year's resolution, recognizing the competence of the ILO in this area, underscoring the equal right of women and men to the enjoyment of the right to work and highlighting discrimination against women and against persons with disabilities.

It also expresses concerns about working children and increasing unemployment, and in particular youth unemployment. Looking to solutions, the resolution calls upon States to put in place comprehensive policies and to take the legislative and administrative measures necessary for the full realization of the right to work, including through considering to undertake policy commitments and measures to obtain full and productive employment and decent work for all, and emphasises initiatives to foster small and medium-sized enterprises and cooperatives, the vital role of the private sector in generating new investments, job opportunities and financing for development, and an environment that supports investment, growth and entrepreneurship is essential to the creation of new job opportunities.

Importantly, the resolution includes an acknowledgement of the link with poverty elimination and to other economic, social and cultural rights:

Recognizes that employment should be a central objective of economic and social policies at the national, regional and international levels for the sustainable eradication of poverty and for providing an adequate standard of living, and emphasizes in that regard the importance of relevant social protection measures, including social protection floors.

Unfortunately, despite suggestions from civil society and from some European States, the importance of the right to form trade unions (Art 8 ICESCR) was not underlined in the resolution. The compromise paragraph reads:

Recognizes the important contribution of workers and employers organizations in the area of full and productive employment and decent work for all

This paragraph focuses on the contribution of workers organisations, but fails to insist on the fundamental importance of the right of everyone to form trade unions and join the trade union of his choice and for trade unions to function freely. The Committee on Economic, Social and Cultural Rights has made clear that Articles 6 (right to work), 7 (just and favourable conditions) & 8 (trade union rights) of the ICESCR are interrelated and cannot be read separately:

Articles 6, 7 and 8 of the Covenant are interdependent. The characterization of work as decent presupposes that it respects the fundamental rights of the worker.¹

It is hoped that the 2017 resolution on the right to work remedies this imbalance.

Economic, social and cultural rights

The Secretary-General's annual report on economic, social and cultural rights (A/HRC/31/31) focused this year on **methodologies used at the national level to measure the realization of ESC rights**. The report begins by confirming that measuring and monitoring the situation of human rights is inherent to human rights obligations without which States do not have the information necessary to develop the laws, policies and programmes that will enable them to meet their obligations and that measuring and monitoring are crucial to accountability of duty holders.

¹ Committee on Economic, Social and Cultural Rights, General Comment 18, UN Doc E/C.12/GC/18, paragraph 8

The report distinguishes development indicators from ESC rights indicators and notes that ESC rights indicators, unlike development indicators, are: based on international legal standards; linked to accountability; subject to cross-cutting principles such as non-discrimination; and place importance on process (such as participation and consultation) as well as outcomes.²

Another important point emphasized in the report is that both immediate obligations and progressive realization obligations must be monitored, in terms of the steps taken and the results achieved. To this end, a unified, well-designed, contextualized, national assessment and monitoring system needs to be put in place and regularly updated.³

A number of examples of States' initiatives to measure and monitor the realization of ESC rights are provided. Many of these State initiatives are part of a broader system for measuring and monitoring human rights and are used to feed into reporting and follow-up for all treaty body reporting and UPR recommendations. Many are also attached to regional, national or sub-national accountability mechanisms.

The report also stresses the importance of the collection of disaggregated data which will enable authorities to prioritise the protection of vulnerable and marginalized groups and identify patterns of marginalization and discrimination.⁴

The report makes the point that successful measurement of human rights cannot be achieved without the participation of, and in consultation with, the persons concerned and this should be a cross cutting principle applicable throughout measurement processes, including methodological design, data collection, analysis of results, adjustment of policies and programs and prioritisation of resources.⁵ In addition, the report asserts that the legitimacy of the measurement process and subsequent decision-making needs to be preserved through safeguards guaranteeing independence and objectivity,⁶ and through transparency and access to information throughout the process, paying attention to confidentiality, ethical standards and the right to privacy.⁷

The report concludes by noting that the current call for a data revolution for sustainable development in the context of the 2030 Agenda is both an opportunity and challenge to ensure that it integrates a human rights-based approach to data and statistics, which would include the elements of: meaningful participation; disaggregation and collection of data by population groups; self-identification; privacy, transparency and accountability.⁸

² Report of the UN Secretary-General, on 'Question of the realisation in all countries of economic, social and cultural rights', January 2016, UN Doc A/HRC/31/31, paragraph 7

³ *ibid.*, paras 11 - 14

⁴ *ibid.*, paras 35 - 40

⁵ *ibid.*, para 41

⁶ *ibid.*, para 45

⁷ *ibid.*, paras 58 - 62

⁸ *ibid.*, para 66

Resolution

Portugal again presented the annual omnibus resolution on the question of the realization in all countries of economic, social and cultural rights which was adopted without a vote with 62 co-sponsors ([A/HRC/RES/31/5](#)). The resolution picks up some of the issues addressed in the Report, although much of the negotiated language is less forceful or definitive than the Report. For instance, the resolution recognizes that reliable information and disaggregated data are important for the assessment of progress or regression in the realization of economic, social and cultural rights, and can help to support the development of laws, policies and programmes to help States to meet their human rights obligations. It also acknowledges the importance of assessing progress in the realization of economic, social and cultural rights, and that human rights measurement can contribute positively to the implementation by States of their obligations, including in the context of their interaction with international human rights mechanisms ... and acknowledges that systematic and coherent national mechanisms for assessing progress in respect of each State on the realization of economic, social and cultural rights, when fully in line with international human rights law principles and standards, can make policies, programmes and budgeting processes more efficient and help to improve State reporting on their implementation of those human rights obligations.

As expected, there was some discussion during the negotiations over whether the Right to Development ought to be specifically mentioned in the introductory paragraphs and South Africa made a statement at voting noting its disappointment that this was not included. There was also substantial discussion about how to refer to the 2030 Agenda for Sustainable Development and Addis Ababa Action Agenda of the Third International Conference on Financing for Development and to the meagre references to human rights in those documents.

As is habitual the resolution calls on States to consider ratifying the ICESCR and encourages States to consider ratifying the OP-ICESCR.

In conclusion, the Council requests the Secretary-General to continue to prepare an annual report on ESC rights with the next report having a focus on the realization of ESC rights in the implementation of the 2030 Agenda for Sustainable Development.

Environment & Climate change

There were a number of initiatives on human rights and the environment and climate change at this session of the Human Rights Council.

Special Rapporteur - Environment

The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean and healthy and sustainable environment, Mr John Knox, presented 2 reports:

- First, a report focused on human rights and climate change ([A/HRC/31/52](#)); and
- Second, a report on the possible methods of implementing human rights obligations relating to the enjoyment of a healthy environment, challenges and the way forward ([A/HRC/31/53](#)). This report provides a survey of methods of implementation of human rights obligations relating to the environment, addressing international actors such as the Human Rights

Council, regional bodies, national actors and civil society organisations.

The report on human rights and climate change (A/HRC/31/52) provides a useful summary of the growing attention to this issue through a chronological mapping of actions of inter-governmental bodies and agreements addressing human rights and climate change. It also summarises the effects of climate change on the enjoyment of human rights, discussing issues such as: access to safe drinking water; food security; forced migration; small island States inundation; animal and plant extinction; increases in infectious diseases; and the impact on human rights of more extreme weather events.

The Special Rapporteur then addresses States' human rights obligations relating to climate change. He begins by pointing out that whilst allocating fault or legal liability through proving causation will become less difficult as the scientific knowledge improves, it is not necessary to prove causation or responsibility in order to establish State human rights obligations. States already have obligations to protect against foreseeable environmental impairment of human rights whether or not the environmental harm itself violates human rights law, and whether or not States directly cause the harm.

In considering the cross-border impacts of climate change, the Special Rapporteur contends that it is not necessary to delve into controversial questions of extra-territoriality, as the duty of international co-operation can be relied on instead. He finds support for this duty in the UN Charter, the ICESCR and the UNFCCC and clarifies that the duty does not require each State to take exactly the same actions in response to climate change. The Special Rapporteur notes that both the much debated UNFCCC notion of common but differentiated responsibilities and the ICESCR obligation to use the maximum available resources, with a view to achieving progressively the full realization of the rights, allow States to respond according to their situation.

The Special Rapporteur then provides a detailed discussion of the procedural and substantive State obligations with respect to human rights and the environment and obligations relating to vulnerable groups. In relation to substantive obligations, the report again turns to the duty of international co-operation to understand what States are required to do. Through this lens the Special Rapporteur assesses the international climate change regime, which culminated in the Paris Agreement, and finds that States have struck a reasonable balance in many respects, but also fall short in some critical respects. Specifically, he notes the significant gap between the stated goal of the Paris Agreement and the national commitments made in relation to both mitigation and adaptation.¹⁰

In summary, the report provides an encouraging view of the advances made in relation to human rights and climate change and a useful synthesis of the existing procedural and substantive obligations of States.

⁹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean and healthy and sustainable environment, February 2016, UN Doc A/HRC/31/52, paragraph 75

¹⁰ *ibid.*, paragraphs 76 - 79

OHCHR study & Panel discussion

In addition, the Office of the High Commissioner for Human Rights presented an analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/31/36).

This was also the topic of a panel discussion which was opened by the Deputy High Commissioner of Human Rights, Ms Kate Gilmore and addressed by Dr Margaret Chan, head of the WHO, the Special Rapporteur on Health and representatives of NGOs, academia and States.

The discussion noted that climate change is the biggest health issue of the 21st century and that climate change is increasingly risks wiping out health sector gains and inflicting catastrophic losses of life and property, burdening the national and international health systems. A wide range of impacts were discussed, such as: increase in water-borne and insect-borne diseases; malnutrition resulting from decreased food security; heat-stress and related illnesses; greenhouse gases causing a decline in the nutritional value of foods (causing stunting etc.); and air pollution due to greenhouse gases and wildfires. The panel emphasized that the effects are felt most acutely by persons, groups and peoples in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous and minority status and disability. They also noted that climate change contributed to deepening social inequalities and highlighted the particular vulnerability of developing countries. All speakers celebrated the Paris Agreement but underlined the urgency of moving from words to action and in particular, for action to be accompanied by resources. An unofficial summary of the discussion is [here](#).

Resolution

A core group of Slovenia, Costa Rica, Maldives, Morocco and Switzerland, presented a resolution on human rights and the environment, adopted without a vote as orally revised (A/HRC/RES/31/8) and co-sponsored by 72 States.

This was a sensitive negotiation given the recent hard fought negotiation of the Paris Agreement and the desire of delegates not to re-open those discussions and contentious issues. Some States were concerned about apparent ~~mandate creep~~ by the Special Rapporteur and in particular the work on climate change and the focus on climate change in the text of the resolution, in the context of there being another resolution solely on the topic of climate change. Some States were eager to see the contentious principle of ~~common but differentiated responsibilities~~ reflected in this text but others noted the difficulty with this concept in the human rights context and the potential for conflict with the human rights concept of universality. Many States opposed suggestions to ~~encourage~~ States to further consider the human rights perspective in the global climate challenge at COP22 but diluted language on this was included in the final text. Importantly the text retained the following paragraph which encourages States:

- ~~To~~ seek to ensure that projects supported by environmental finance mechanisms respect all

human rights¹¹.

Similarly, States debated how best to refer to the 2030 Agenda and whether and how to reflect the delicate reference to human rights in that text, in the current resolution.

Whilst the core group boldly included in the zero draft a call on States to consider adopting a right to a healthy environment into their national legal system¹² this was removed after resistance from States from most regions.

There were also discussions about the protection of human rights defenders and how to refer to this group and to the rights to freedom of expression, peaceful assembly and association.

Given the extensive evidence of the surge in harassment and attacks on human rights defenders working on environmental issues, it is pleasing that the final text retains the following paragraphs:

- Calls on States to facilitate public awareness and participation in environmental decisionmaking, including of civil society, women, youth and indigenous peoples, by protecting all human rights, including the rights to freedom of expression and to freedom of peaceful assembly and association¹²
- Calls on States to promote a safe and enabling environment in which individuals, groups and organs of society, including those working on human rights and environmental issues, can operate free from threats, hindrance and insecurity¹³
- *Recognizes* the important role played by individuals, groups and organs of society, including human rights defenders, in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.¹⁴

Also important for ensuring procedural rights relating to environmental issues is this paragraph:

To adopt and implement laws ensuring, among other things, the rights to information, participation and access to justice in the environmental field.¹⁵

Other interesting paragraphs in the resolution include:

- “ On business: Calls on States to foster a responsible private business sector and to encourage corporate sustainability reporting, while protecting environmental standards in accordance with relevant international standards and agreements and other ongoing initiatives in this regard¹⁶.
- “ On education: Encourages States to explore ways to incorporate information on human rights and the environment, including climate change, in school curricula, in order to teach the

¹¹ Human Rights Council Resolution on ‘Human rights and the environment’, March 2016, A/HRC/31/L.10, OP 5(g)

¹² *ibid.* OP 4(c)

¹³ *ibid.* OP 4(e)

¹⁴ *ibid.* OP 6

¹⁵ *ibid.* OP 4(b)

¹⁶ *ibid.* OP 5(l)

next generations to act as agents of change, including by taking into account indigenous knowledge¹⁷.

Right to Food

The Report of the Special Rapporteur on the right to food ([A/HRC/31/51](#)) was presented at the 31st session, together with her mission reports on Philippines and Morocco. The report explores the structural, cultural, legal, economic and ecological barriers that women face in their fulfilment of the right to food. It pays focused attention to women's access to land, property and productive resources as essential for the realization of the right to food.¹⁸ It identifies examples of good practice, demonstrating how increased access to and control over assets by women, has been shown to have positive effects on household food security, child nutrition and general well-being of the woman and her family.

The report also discusses how the intellectual property rights regime excludes women food producers and acts as a barrier to the realisation of the right to food.¹⁹ In addition, the impact of global economic policy, including agricultural trade liberalisation and the dominance of corporate and export models of agriculture, disadvantage women, who tend to be small-holder and subsistence farmers and has led to an overall loss in agricultural productivity, decreased yields, and increasingly precarious rural livelihoods.²⁰

Climate change and its threat to food security and the consequential impact on women are also addressed. The Special Rapporteur discusses why women matter in climate change policies and how to ensure such policies are gender sensitive, through: ensuring women's effective participation in decision-making; integrating gender-disaggregated data and perspective into research; ensuring women's access to information and technology; and ensuring climate-related financial aid is gender-sensitive.²¹

Resolution

The annual Cuban-led resolution on the right to food (A/HRC/RES/31/10) was adopted without a vote as orally revised. The final lengthy text expresses concern about the intolerable statistics on hunger and undernourishment and describes hunger as an outrage and a violation of human dignity.²² Reflecting the Special Rapporteur's report, women's rights feature strongly throughout the resolution and there are a number of strong paragraphs on the importance of the empowerment of women and ensuring a gender perspective in all strategies for the realisation

¹⁷ *ibid.* OP 5(e)

¹⁸ Report of the Special Rapporteur on the right to food, December 2015, UN Doc A/HRC/31/51, paras 21-26

¹⁹ *ibid.*, paragraphs 31 - 38

²⁰ *ibid.*, paragraph 39

²¹ *ibid.*, paragraphs 79 - 85

²² Human Rights Council Resolution, 'The right to food', March 2016, UN Doc A/HRC/RES/31/10, OP 1, 3, 4

of the right to food.²³ It also emphasises the importance of supporting women small-holder and subsistence farmers for guaranteeing food security.²⁴

The resolution also stresses the global dimensions of hunger, food insecurity, malnutrition and the food crisis, and the global nature of many of the causes, such as climate change, the international trade system and the global financial crisis. In terms of solutions, the text focuses heavily on international co-operation and calls for developed States to support developing States in the realization of the right to food, to enhance development co-operation and food aid, extend debt relief to developing States and transfer technologies.²⁵ However, this call is attenuated by a recognition of the importance of national ownership of State strategies and programs and rejection of unilateral measures and aid conditionality.²⁶

The resolution touches on the controversial WTO Doha Round of trade negotiations and the issue of food stock piling, by referring to the distortions in the agricultural trading system, and calling for a successful development-oriented outcome of the Doha Round of trade negotiations of the World Trade Organisation and for States to make every effort to ensure that their international policies of a political and economic nature, including international trade agreements, do not have a negative impact on the right to food in other countries²⁷

There is also a significant focus in the resolution on people in rural areas, small-holder and subsistence farmers and access to productive resources.²⁸ For instance, the Council

Stresses that improving access to productive resources and investment in rural development is essential for eradicating hunger and poverty, in particular in developing countries, through, inter alia, the promotion of investments in appropriate small-scale irrigation and water management technologies in order to reduce vulnerability to droughts, as well as in programmes, practices and policies to scale up agroecological approaches²⁹

Finally the resolution requests the Special Rapporteur to continue to monitor the evolution of the world food crisis and its impact on the enjoyment of the right to food.³⁰

Right to adequate Housing

The 31st session also saw the presentation of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context ([A/HRC/31/54](#)). The excellent report focuses on homelessness and makes a powerful argument that homelessness is an extreme violation of the right to

²³ *ibid.*, for OP 7 -10

²⁴ *ibid.*, OP 6 - 9, 20

²⁵ *ibid.*, OP 14, 16, 26, 30, 40,

²⁶ *ibid.*, PP 11, 13

²⁷ *ibid.*, OP 16, 32, 33

²⁸ *ibid.*, PP 18, 20, OP 9, 15, 19 - 23

²⁹ *ibid.*, OP 19

³⁰ *ibid.*, OP 49

adequate housing and often of many other human rights and that the global homelessness crisis is not being addressed with sufficient urgency and priority. The Special Rapporteur makes a bold call for all States to commit to eliminating homelessness by 2030.

The Report begins by tackling the difficult question of the definition of homelessness and its applicability to different cultural, linguistic and economic realities. She proposes a 3-dimensional human rights definition of homelessness which is contextual and flexible and rejects moral explanations that highlight personal failures and charity. The Special Rapporteur's definition focuses on:

- “ The absence of a home in both the material and social senses;
- “ The social identity of homelessness and the associated systemic discrimination, stigmatization and social exclusion; and
- “ Homeless people as rights holders and central, resilient agents of the social transformation necessary to realize the right to adequate housing.

The report pays significant attention to discrimination, stigmatization and social exclusion and notes that these are both a cause and consequence of homelessness. The Special Rapporteur highlights the proliferation of laws that criminalise homelessness and calls on States to immediately repeal all such laws.³¹ She also calls upon the media to ensure that homeless people are not depicted in a discriminatory or hateful manner and suggests regulation is needed in this regard.³²

The report discusses the interconnected causes of homelessness, emphasizing both structural and institutional causes, and individual circumstances. Structural causes highlighted include: inequality; abandonment by the State of its role in providing affordable housing and over-reliance on the private housing market to meet demand; land use policies that favour commercial development over housing and fail to respect the social function of land as a public good; and fiscal crises and austerity measures.³³

The Special Rapporteur addresses the challenges and importance of measuring homelessness through the collection of reliable, disaggregated data, including qualitative evidence and longitudinal analysis of the trajectories into and out of homelessness. She stresses the importance of paying attention to hidden forms of homelessness and to genuine consultations with stakeholders and sensitivity to the circumstances of particular groups.³⁴

The report also helpfully summarises the State obligations in relation to homelessness, including the immediate obligations to:

- “ adopt and implement strategies to eliminate homelessness, with clear goals, target and timelines;

³¹ Report to the Human Rights Council of the Special Rapporteur on adequate housing, UN Doc A/HRC/31/54, paragraphs 23 - 24, 91(e)

³² *ibid.*, paragraph 19, 92(a)

³³ *ibid.*, paragraphs 28 - 33

³⁴ *ibid.*, paragraphs 72 - 73

- “ eliminate the practice of forced eviction, especially where it leads to homelessness;
- “ combat and prohibit discrimination against homeless people;
- “ ensure access to legal remedies for violation of rights, including the failure of States to take positive measures to address homelessness; and
- “ regulate third party actors in relation to these matters.³⁵

The Special Rapporteur also presented to the Human Rights Council her mission reports on Cape Verde and Serbia / Kosovo.

Housing Resolution

The bi-annual resolution on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context was also considered at the 31st session. The core group of Finland, Namibia, Germany and Brazil proposed the resolution which, after some negotiation and amendment, was adopted without a vote with over 60 co-sponsors ([A/HRC/RES/31/9](#)).

State negotiations centered on: how to refer to the 2030 Agenda for Sustainable Development; some States wanting to water down the references to the right to adequate housing by removing the right; some States wanting a reference to non-State actors with others strongly opposing this addition; many States sought more references to persons with disabilities; much discussion about which marginalized and vulnerable groups to refer to and how to refer to them; and some States sought the inclusion of the right to development in the introductory paragraphs.

Very few States had suggestions to make on the substance of the topic of homelessness. GI-ESCR made suggestions such as:

- Including a paragraph recognizing that homelessness in some circumstances may amount to a violation of the right to adequate housing and renders people highly vulnerable to violation of other ESC rights;
- Adding a recommendation that States consult with all stakeholders before adopting strategies or policies to address homelessness;
- Including a paragraph calling on States to put in place strategies and mechanisms to effectively and reliably measure and publicly document homelessness in order to ensure effective design and implementation of policy responses.

None of these proposals were taken up and, disappointingly, the US and UK in particular reacted strongly against the 1st and 3rd proposal above.

The resolution did break new ground with positive language on:

- Acknowledging the links between climate change and the right to adequate housing;³⁶
- Recognising the particular impact of homelessness on women, persons with disabilities

³⁵ *ibid.*, paragraphs 48, 49, 90

³⁶ Human Rights Council Resolution, ‘Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context’, March 2016, A/HRC/RES/31/9, PP 8

and marginalized and vulnerable groups;

- Recognising that homelessness and tenure insecurity per se might result in discrimination, criminalization and further exclusion, particularly social and economic exclusion³⁷ and calling upon States to take all necessary measures to eliminate legislation that criminalizes homelessness and to ensure an effective remedy and the right to access to justice for all.³⁸
- Recognizing that homelessness is caused by the interplay of individual circumstances and broader systemic factors, and that fulfilling the right to adequate housing as a component of the right to an adequate standard of living requires developing and implementing long-term and human rights-based multisectoral policies and strategies that are gender-responsive and simultaneously address discrimination, marginalization, social exclusion and housing deprivation;³⁹
- The up-coming Habitat III conference and calls upon States to give due consideration to integrating the human right to adequate housing in the negotiation process and the implementation of the outcome document of Habitat III and the new Urban Agenda;⁴⁰
- Recognising States' positive obligations to take positive measures with a view to prevent and eliminate homelessness by adopting and implementing cross-sectoral strategies that are gender-responsive and based on international human rights law.⁴¹

Economic, Social and Cultural rights defenders

The Human Rights Council adopted a resolution ([A/HRC/RES/31/32](#)) on protecting human rights defenders (HRDs) addressing economic, social and cultural rights. Traditionally proposed by Norway, the HRDs resolution has never before focused on ESC rights. The negotiations were hotly contested and culminated in 31 hostile amendments to the text at voting, from Russia, China, Egypt, Pakistan and Cuba. The amendments focused not on the economic, social and cultural rights elements of the text, but on the use of the (internationally accepted) term human rights defenders and the legitimacy of the work of HRDs. None of the amendments were successful and so the final text remained strong and was adopted with over 60 co-sponsors, after a vote with 33 States voting in favour, 6 against and 8 abstentions.

The particularly positive aspects of the resolution include:

- Paragraphs recognizing the role of HRDs in promoting and protecting ESC rights:
 - Recognizing the positive, important and legitimate role of human rights defenders in promoting and advocating the realization of all economic, social and cultural rights, including by engaging with Governments and contributing to the efforts in the

³⁷ *ibid.*, PP 13

³⁸ *ibid.*, OP 5

³⁹ *ibid.*, PP 15

⁴⁰ *ibid.*, OP 4

⁴¹ *ibid.*, OP 6

- implementation of the obligations of States in this regard...⁴²
- ⁵ reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development⁴³
 - ⁶ Recognizing the importance of the independent voice of human rights defenders and other civil society actors, as well as of partnerships between States and civil society in promoting, protecting and realizing all human rights, including economic, social and cultural rights, and the right to development, as well as in the context of the implementation of the 2030 Agenda for Sustainable Development⁴⁴
 - ⁷ Recognizes the important and legitimate role of individuals, groups and organs of society that are defending human rights in identifying and raising awareness of human rights impacts, the benefits and risks of development projects and business operations, including in relation to workplace health, safety and rights, and natural resource exploitation, environmental, land and development issues, by expressing their views, concerns, support, criticism or dissent regarding government policy or action or business activities, and underlines the need for Governments to take the measures necessary to safeguard space for such public dialogue and its participants;⁴⁵
 - Paragraphs concerning the growing harassment of and attacks on ESC rights defenders, including the recent assassination of Honduran HRD, Ms Berta Cáceres:
 - ⁸ .deeply regretting the assassination, following death threats, of persons addressing human rights in the context of land and environmental issues, including indigenous leaders^q
 - ⁹ Expressing grave concern also at the observations and findings of the Special Rapporteur on the situation of human rights defenders that human rights defenders addressing environmental and land issues and corporate responsibility, as well as those working on governance issues, promoting transparency and accountability, and those exposing discrimination, corruption and violence at the hands of States, business enterprises and other non-State actors, are among those human rights defenders who are most exposed and at risk, and noting with grave concern also the findings of the Working Group on Enforced or Involuntary Disappearance that the practice of enforced disappearance is often used to repress and intimidate human rights defenders and prevent others from claiming and exercising their economic,

⁴² Human Rights Council Resolution, ‘Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights’, March 2016, A/HRC/RES/31/32, PP 13

⁴³ *ibid.*, OP 1

⁴⁴ *ibid.*, OP 7

⁴⁵ *ibid.*, OP 14

- o social and cultural rights⁴⁶
 - o and gravely concerned about the resulting negative impact on the realization of economic, social and cultural rights, including violations and abuses⁴⁷
- On remedies:
 - o Underlines the legitimate role of human rights defenders in supporting victims in accessing effective remedies for violations and abuses of their economic, social and cultural rights, including for ..impoverished communities minorities and indigenous peoples;⁴⁸
- With regard to access to information:
 - o Calls upon all States to ensure that information held by public authorities, including with respect to economic, social and cultural rights, and as related to environmental, land, natural resources and development issues, is proactively disclosed and not unnecessarily classified or otherwise withheld from the public, and also calls upon all States to adopt transparent, clear and expedient laws and policies that provide for the effective disclosure of information held by public authorities and a general right to request and receive information, for which public access should be granted, except within narrow, proportionate, necessary and clearly defined limitations;⁴⁹
- Several paragraphs directed at business including OPs 15, 16, 17 and:
 - o Encourages business enterprises of all categories to avoid, identify, assess and address any adverse human rights impacts related to their activities through meaningful consultation with potentially affected groups in a manner consistent with the Guiding Principles on Business and Human Rights and underlines the importance of accountability, including of all business enterprises, both transnational and others, including their provision of or cooperation in remedial action, and also encourages all business enterprises to share and exchange best practices and communicate externally ... how they address their adverse human rights impacts⁵⁰

The International Service for Human Rights has written about the resolution [here](#).

Cultural Rights

At the 31st session, the Special Rapporteur in the field of cultural rights, Ms Karima Bennouna, presented her report (A/HRC/31/59). Being her first report, the mandate holder identified her priority areas of work and introduced the topic of her next report on the intentional destruction of cultural heritage as a violation of human rights.

In the report the Special Rapporteur revisits and reconfirms the conceptual and legal framework of cultural rights, providing a helpful summary of relevant definitions and key debates (meaning of community and reality of lack of homogeneity; diverging interests and

⁴⁶ *ibid.*, PP 22

⁴⁷ *ibid.*, PP 21

⁴⁸ *ibid.*, OP 10

⁴⁹ *ibid.*, OP 12

⁵⁰ *ibid.*, OP 17

power imbalances within communities; individual vs group rights; cultural relativism and cultural justifications for discrimination against women and other groups; and the importance of commonality and living together in harmony) and the legal bases of the right. In terms of her future priorities for the mandate, the Special Rapporteur identified the following:

- “ intentional destruction of cultural heritage, including in the name of development and as impacts indigenous peoples;
- “ fundamentalism and extremism;
- “ artists, scientists and intellectuals at risk;
- “ the right to artistic expression and creativity and related censorship;
- “ protection of the cultural rights of migrants and refugees;
- “ access to and use of public space;
- “ cultural rights of children and youth and education about the importance of culture;
- “ persons with mixed/multiple identities;
- “ culture and new technologies, access to and control of information and communications;
- “ popularizing the message of cultural rights, including through the use of culture (art, music etc.).

Resolution

The Council also adopted by consensus a resolution ([A/HRC/RES/31/12](#)) on ‘Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity’ The succinct text was proposed by Cuba and eventually supported by 39 co-sponsors, and includes the following:

- “ Recalls that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope;⁵¹
- “ Recognizes that respect for the cultural diversity and cultural rights of all enhances cultural pluralism, contributing to a wider exchange of knowledge and understanding of cultural heritage and background, advancing the application and enjoyment of human rights throughout the world and fostering stable, friendly relations among peoples and nations worldwide;⁵² and
- “ Recognizes that respect for cultural rights is essential for development, peace and the eradication of poverty, building social cohesion and the promotion of mutual respect, tolerance and understanding between individuals and groups, in all their diversity.⁵³

⁵¹ Human Rights Council resolution, ‘Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity’ March 2016, UN Doc A/HRC/RES/31/ 12, OP 4

⁵² *ibid.*, OP 6

⁵³ *ibid.*, OP 7

Other initiatives of interest:

“ During its first week the Council held a high-level panel discussion on the **50th anniversary of the International Human Rights Covenants** which focused on the themes of universality, indivisibility, interdependence and interrelatedness of all human rights. The discussion was opened by the UN High Commissioner for Human Rights, Mr Zeid, followed by the Deputy Minister for Foreign Affairs of the Russian Federation, Mr Gennady Gatilov. The panelists included the Chairs of the Committee on ESCR and the Human Rights Committee.

Some of the themes that emerged from panelists included:

“ indivisibility needs to be recognized in the jurisprudence of the Committees through recognition of the economic and social elements of civil and political rights and conversely, recognition of the civil and political elements of economic, social and cultural rights;

“ that all rights should be given equal attention in human rights bodies and the current perceived hierarchy of rights must be challenged; and

“ that the UDHR’s vision of indivisibility should be resurrected and we should work towards unification of the 2 Committees.

An unofficial summary of the discussion can be found [here](#).

“ The Report of the Independent Expert on the **effects of foreign debt and other related international financial obligations of States** on the full enjoyment of human rights, particularly economic, social and cultural rights ([A/HRC/31/60](#)) was presented to the Council together with the mandate holder’s mission reports on China and Greece.

“ A resolution ([A/HRC/RES/31/11](#)) 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, was adopted after a vote which saw 33 States vote in favour, 12 against and 2 abstentions.

“ The final study on **illicit financial flows, human rights and the 2030 Agenda for Sustainable Development** ([A/HRC/31/61](#)) 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, particularly economic, social and cultural rights was also presented.

“ A resolution ([A/HRC/RES/31/22](#)) on the **negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights**, and the importance of improving international cooperation, was adopted after a vote, producing 32 States in favour, none against and 15 abstentions.

“ The High Commissioner for Human Rights submitted a Human Rights Council mandated report on protection of the family: **contribution of the family to the realization of the right to an adequate standard of living** for its members, particularly through its role in poverty eradication and achieving sustainable development ([A/HRC/31/37](#)).

“ Also submitted to this session was the Report on the first session of the Open-ended intergovernmental working group on **transnational corporations and other business**

enterprises with respect to human rights ([A/HRC/31/50](#)).

“ Communications report of Special Procedures ([A/HRC/31/79](#)).