

CIVIL SOCIETY AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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On 19 March 1997 the Commission on Human Rights told the international community that «*the implementation of economic, social and cultural rights for people world wide was the joint responsibility of developed and developing nations, country representatives and non-governmental organisations (NGOs)*»².

Traditionally, the international community, including governments and NGOs, has placed emphasis on the promotion of civil and political human rights. Economic, social and cultural rights (ESCR) have been neglected. This is partly due to operational problems: it is not yet clear what entitlements these rights imply. Nor do we know the exact legal obligations of the state to realise them. All we know is that governments that have ratified the International Covenant on ESCR (136 in July 1997)³ have agreed to the progressive realisation of these rights (including the right to work, to education, to social security, etc.) with available resources. Governments are thus the principal bodies responsible for the implementation of ESCR.

Historically, the division of basic human rights into two Covenants, the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966) is an outcome of the Cold War and its opposing ideological points of view. With the end of the Cold War, the focus of the political debate is no longer on contrasting simplified economic models. Nevertheless, there is a continuing ideological debate on the roles of different actors, such as governments, NGOs and private enterprises and on how private and public initiative can be combined to resolve contemporary social and economic problems such as unemployment, the provision of education and health care.

The concept of global governance describes the process through which conflicting interests might be resolved and co-operative action for the achievement of common goals can be taken. It implies that the solution to global social and economic problems has ceased to be an intergovernmental affair, but now involves NGOs, citizen movements, multinationals and the mass media. NGOs have emerged on the international scene as the representatives of civil society. They are not well defined and are usually seen as organisations that are private in their form but public in their purpose⁴.

THE CHANGING ROLE OF NGOS IN THE UN SYSTEM

THE 1990S INTERNATIONAL CONFERENCES

In the 1990s, the UN organised a series of international conferences in order to define the strategy of the international community for solving key global problems. All of these conferences were directly related to the topic of ESCR and provided for broad participation of NGOs. It was, however, the UN Conference on Environment and Development (UNCED) in Rio de Janeiro, 1992, that constituted a turning point in the UN-NGO relationship. UNCED organisers did not invite NGOs according to their consultative status, but rather according to their interest and competence on issues on the Conference's agenda. This allowed 700 NGOs⁵ to participate in the preparatory process, the Conference itself and, thereafter, in the UN Commission on Sustainable Development.

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² United Nations Information Service, Press Release: «*Human Rights Commission concludes debate on economic, social and cultural rights*», HR/CN.7/17, UN Office at Geneva, 19th March 1997.

³ Information provided by the Secretary of the Committee on Economic, Social and Cultural Rights, Alexandre Tikhonov, UN Geneva, 15 July 1996.

⁴ For a discussion on the definition of NGOs and how information on them can be put into an analytical framework see Gordenker, Leon, Weiss Thomas, «*Pluralising global governance: analytical approaches and dimensions*», Third World Quarterly, Vol 16, No 3, 1995, Surrey, UK.

⁵ This is an approximate figure. Different sources indicate different figures, most are around 700.

The newly acquired informal status of these NGOs required legitimisation, so the UN accorded them Roster status⁶. This, in turn, allowed them to participate in subsequent UN conferences. In 1993, 840 NGOs participated in the World Conference on Human Rights in Vienna. The Vienna Conference is a good example of the shift in the type of NGOs present. Only 200 NGOs attended the 1968 Conference on Human Rights in Teheran, and most of them were international NGOs from the northern hemisphere. In Vienna, 593 of the 841 NGOs present were national and local NGOs, mainly from the South (Guillet, 1995).

There is a shift from an informal to a more formalised and increased participation, especially of national NGOs, at international conferences. There is also an acknowledgment of the importance of particular interests and of the information NGOs can provide to the international community. Another interesting development is the mutual recognition of NGOs and governments. In subsequent conferences, such as the Conference on Social Development in Copenhagen and the Conference on Women in Beijing, many governments included NGO representatives in their official delegations. NGOs in turn confirmed their interest in these intergovernmental meetings by organising parallel NGO conferences and creating public awareness and dialogue on the conferences and the issues.

Despite these positive developments, there is a continuing political conflict over the role of NGOs that is closely related to the issues of state sovereignty and representativity. With regard to sovereignty, UN member states can object to the accreditation of national NGOs and thus silence their voices. With regard to representativity, NGOs with consultative status are automatically accredited if they wish, but there has been no control over whom they actually represent. This makes them vulnerable to criticism from governments, and also from fellow-NGOs who regard them as a part of the «establishment», without any legitimate constituencies. These examples show the extent to which procedures reflect operational and political problems associated with the role of NGOs in the international arena.

THE NEW ECOSOC RESOLUTION OF 1996

Given the intergovernmental structure of the UN, the NGO relationship with the UN has traditionally been limited to ECOSOC. From 1968 to 1996, it was regulated by ECOSOC Resolution 1296 (XLIV) of 1968, according to which NGOs could acquire consultative status with the UN if they were concerned with matters falling within the competence of ECOSOC with respect to international economic, social, cultural, educational, health, scientific, technological and related matters and to questions of human rights, and if they conformed with the spirit, purposes and principles of the Charter. Moreover, they «shall be of representative character and of recognized international standing» (ECOSOC Resolution 1296, 1969, Part I, Articles 1–4).

This resolution divided NGOs into three different categories.

Category A was given to NGOs with a broad interest in most ECOSOC activities and who were seen as representing international opinion. Category B was assigned to NGOs with interest in special spheres of ECOSOC, and Category C was for those who were able to contribute occasionally to the work of ECOSOC. This gave big international NGOs, mainly from the North, a comparative advantage, as many smaller Southern NGOs represented local rather than international interests.

From 1993 onwards there was a general review of arrangements for consultation with NGOs with a view to updating the 1968 resolution and to establishing coherent rules for NGO participation in international conferences. **The review was due to the changed international environment, and in particular to a shift in the international agenda from so-called «hard» topics such as disarmament and military confrontation to «soft» topics, such as the environment, women and social policy.** These topics do not focus on inter-state affairs, but refer to the relation between individuals and the state.

They also imply a change in the concept of security, where national security is replaced by the security of the individual. As Jessica Mathews describes in her article «Power Shift»: «A competing notion of 'human security' is creeping around the edges of official thinking, suggesting that security be viewed as emerging from the conditions of daily life – food, shelter, employment, health, public safety – rather than flowing downward from a country's foreign relations and military strength.» (Mathews, 1997). This change of emphasis is misleading, however, given that in ESCR and in other areas such as the environment, inter-state relationships in the form of trade relations, consumption patterns, etc., bear directly on individual well-being.

The shift from «hard» to «soft» topics and the importance of NGO contributions to them are reflected in the two main results of the ECOSOC-NGO review. The first, ECOSOC Decision 1996/297, provides NGOs with access, for the first time, to all spheres of work of the UN including those which were formerly reserved strictly for governments, such as the General Assembly and the Security Council:

«At its 49th plenary meeting on 25 July 1996, the Economic and Social Council, reaffirming the importance of the contributions of NGOs to the work of the UN, and taking into account the contributions made by NGOs to recent international conferences, decided to recommend that the General Assembly examine, at its fifty-first session, the question of the participation of NGOs in all areas of the work of the UN, in light of the experience gained through the arrangement for consultation between NGOs and the Economic and Social Council.»

This is an important acknowledgment of the role of NGOs and

⁶ (for the definition of Roster status refer to page 61).

could widen their sphere of political influence, formerly restricted to ECOSOC, to other more politically powerful organs, such as the General Assembly and the Security Council. However, the form of these new channels of participation will be examined by the General Assembly, where it will likely meet with political resistance from those governments who would like to see the role of NGOs minimised.

From an operational point of view, the concrete form of participation will largely depend on UN reforms and the funds available thereafter. Here the importance of permanent procedures becomes evident. Procedures do not only provide space for participation, but also have implications for human and financial resources which may or may not be available for certain groups. **In the case of indigenous populations, for example, a permanent forum within the UN system would allow indigenous people to access international decision-making and technical cooperation programmes in all spheres of ESCR.**

The second result of the ECOSOC-NGO review is ECOSOC Resolution 1996/31, which lays out the new «*Consultative Relations between the UN and NGOs*». The classification of NGOs into three categories, now called General status, Special status and Roster, are basically maintained. NGOs that do not qualify for consultative status may enter on the Roster list of NGOs. Roster NGOs may make «*occasional and useful contributions to the work of the Council or its subsidiary bodies or other UN bodies within their competence.*»⁷ Moreover, by including the right to designate authorised representatives to be present at public meetings, the right to submit written statements and the right to make oral presentations, the resolution stresses the role of NGOs to provide information and represent particular interests.

The most important changes for the role of NGOs reflected in this new resolution are the following:

First, national NGOs are now eligible for consultative status even if they are national affiliates of international NGOs. This is a recognition of the important role they played in recent international conferences, where they contributed, as outlined above, to the issues of environment, social development and women, etc. with local and in depth information of the situation in individual countries. Thus, there is now a legitimate representation of particular, local interests.

Second, the participation of NGOs from developing countries will be increased as they are often from a local or national background and can now represent interests from the South directly in the international arena.

Third, the role of providing information is now open to a wide range of NGOs, as the Roster status allows nearly any NGO to contribute information to international conferences as long as it is relevant to the issue addressed. The result of this is an increase in the number of interests represented at these events, as noted earlier.

THE POTENTIAL ROLE OF NGOS: MONITORING FOLLOW-UP OF INTERNATIONAL CONFERENCES AND AGREEMENTS

The above analysis of NGO gains in the international arena leads us to conclude that there is a potential new role for NGOs, which will be especially important for the promotion of ESCR. This role is reflected in the growing interest of NGOs not only to provide input to international conferences, but also to monitor the follow up of their declarations and plans of actions.

For this purpose monitoring initiatives such as **Social Watch** provide information to the international community on progress made with respect to the commitments assumed at International Conferences, (eg, on national plans for the eradication of poverty and equal opportunities plans for women) and elaborate indicators that help to measure and compare the quality of the progress made. In South America, the idea of monitoring the implementation of the ESCR has been taken up by the «**Plataforma Sudamericana de Derechos Humanos, Democracia y Desarrollo**». This network of NGOs is working on ESCR indicators for individual countries and on new mechanisms to influence national and international decision-making. What is more, the network has elaborated a Programme of Action for the implementation of ESCR on a national, regional and international level and currently collaborates with the UN Committee on ESCR to provide alternative country reports from the region. The importance of the NGO-Committee collaboration will be discussed below.

In order to strengthen the monitoring role of civil society with respect to ESCR, it is important to link the initiatives of networks such as Social Watch and the Plataforma. Whereas Social Watch puts forward the efforts and information of national NGOs to the international community, helps to share information and experience and tries to influence international decision-makers, the Plataforma provides a space for participation and empowerment of mainly national NGOs who use legal instruments and political pressure to promote and monitor ESCR in their respective countries.

THE ROLE OF NGOS IN A GLOBAL EFFORT TO PROMOTE ESCR

The Covenant on Economic, Social and Cultural Rights was adopted in 1966 and entered into force in 1976. The Committee for monitoring the observance of the Covenant was established by ECOSOC in 1985, giving impetus to the implementation of ESCR. Being a subsidiary body of the ECOSOC, it has always been particularly open to NGOs with consultative status and, in practice, to all NGOs willing and able to provide information.

⁷ ECOSOC Resolution 1996/31, Part III, Article 24.

The monitoring function of the Committee is exercised through the examination of country reports on the situation of ESCR, which all member states have to present every five years. The 18 experts of the Committee compare the information provided by the government with alternative information from NGOs or specialised UN agencies and then adopt concluding observations in relation to a specific state report. These observations are published and distributed to the public.

The following official channels allow NGOs to participate in the Committee's work:

1. Since 1996 all NGOs have been invited to contribute orally and in writing to the pre-sessional working group, where the list of issues and questions for the government to answer is elaborated. NGOs thus have a role in putting priority issues on the agenda.
2. NGOs with consultative status can provide written statements to the Committee, which are then published as official documents and distributed to the governments and experts during the session.
3. All NGOs, regardless of their consultative status, are invited to provide information to the Committee members, and have, moreover, the opportunity to make an oral presentation at the NGO hearing, which takes place during the first afternoon of each of the Committee's bi-annual sessions.
4. NGOs are invited to participate in press conferences at which the Committee's conclusions are made public. NGOs have the opportunity to brief the press afterwards with additional, often more political information (specific violations, etc.).

The collaboration between the Committee and NGOs has a mutual reinforcing effect on the promotion of ESCR. Information provided by NGOs on the situation of ESCR improves the monitoring capacity of the Committee, and NGO information and arguments are in turn legitimised by inclusion in the conclusions of the Committee. **This collaboration can have an important political impact, as shown by the recent example of the Dominican Republic. Preliminary conclusions on the Dominican Republic pronounced in the 1996 November session of the Committee were taken up by several national NGOs and given to the national press. This provoked a national discussion on the right to adequate housing, a right that had been violated by the government, according to national NGOs and the Committee. Not only did this open a national discussion in the Dominican Republic, but public pressure also forced the government to allow a technical assistance mission on the right to housing (sent by the Centre of Human Rights in September 1997) to enter the country. Technical assistance on ESCR had been rejected by previous governments despite ECOSOC decisions in 1993 and 1994 to send such a mission. This example shows the important role that NGOs and the media can have in strength-**

ening the Committee's monitoring functions and how the conclusions issued by the Committee can help to focus the national discussion on specific ESCR violations.

In order to facilitate this complementary relationship, NGO networks are becoming more and more important, as they enhance the role of providing information and make monitoring more effective. A common elaboration of an alternative country report to the Committee has the following advantages:

1. It allows otherwise dispersed information to be collected and combined.
2. NGOs come together to discuss and analyse the situation of ESCR in their country, interchange material and experiences, and identify key areas in which ESCR are violated.
3. A report which represents the analysis of a group of national NGOs is more credible and gains importance, and its claims have a higher degree of legitimisation.
4. The experts of the Committee have one representative with whom they can get into contact and dialogue instead of having to deal with a large set of heterogeneous NGOs.

Despite the increase of national NGOs' contribution to the Committee, it is mainly international NGOs that have established a more permanent link with the Committee and that have participated actively in the general discussion on new mechanisms and permanent procedures for the promotion of ESCR. The Committee has, for example, fought for years for the introduction of an optional protocol that would allow for an individual and/or collective complaints procedure. It has been argued that the fact that petitions can be submitted to the international forum should be an impetus for states to try harder to create a domestic legal framework for the realisation of ESCR rights⁸. If this optional protocol were introduced, individuals and groups (and thus NGOs on behalf of victims or discriminated groups) could bring forward their complaints on specific violations, which would help to define ESCR and the corresponding state obligations in more detail and thus give ESCR equal importance to political and civil rights.

NGOs WITH SPECIALISED AGENCIES

The importance of effective collaboration between NGOs and the UN system in the monitoring of international agreements through permanent procedures is recognised by various specialised UN agencies, such as UNESCO and ILO. Both have established formalised consultative relationships with NGOs, which are reflected in their constitutions (for example, the UNESCO Constitution, article 13, para. 3). *«UNESCO displays a particularly well-developed system of mutual consultation and cooperation, it had formal relations with a total of 582 NGOs at the end of*

⁸ For a detailed discussion of the optional protocol see Advisory Committee on Human Rights and Foreign Policy *«Economic, Social and Cultural Rights»*, The Hague, The Netherlands, 1993.

1991.»⁹ NGOs with consultative status are automatically invited as observers to UNESCO's main political organ, the General Conference, NGOs collaborate in UNESCO's programmes and projects and the organisation provides funds for NGO activities. Moreover, every two years a conference with international NGOs holding consultative status is organised in order to discuss UNESCO-NGO relationships.

The ILO uses a very successful tripartite supervisory system for the implementation of ILO conventions and recommendations. «Under article 19 and 22 of the ILO Constitution member states are required to report to the ILO on the measures they have taken to bring conventions and recommendations to the attention of the competent national authorities with a view to ratification or other suitable action. As regards conventions which they have ratified, states report on their implementation. A particularly important stipulation is that governments must send copies to national organisations of employers and workers, who thus have the opportunity of commenting on them if they wish. It is clear, therefore, that one of the key features of an effective reporting system, the availability of critical information from other responsible sources, which until recently was a weak point in the International Covenant on Economic, Social and Cultural Rights, has always been fully provided for in the procedures of the ILO.»¹⁰ This positive example of a consultative committee will, however, not be further discussed here, because the relationship is with international employers' and workers' associations and not with NGOs (which are much more heterogeneous, less well organised and not as representative).

The examples of UNESCO and ILO confirm, on one hand, the importance of official permanent channels that are open to NGO participation. On the other hand, they remind us that there are additional factors that influence the role of NGOs in each organisation, such as the issues at stake, funding, and other actors and power relations involved. In education, for example, NGOs are natural allies in the promotion of human rights education, whereas in macroeconomics they are often seen as critics of government policies or are simply non-existent as actors. Yet, it is essential for civil society to monitor programmes and policies of organisations such as the World Bank and WTO whose macro-policies have long-lasting effects on the situation of ESCR at national, regional and international levels.

THE EFFECTIVENESS OF NGOS IN THE PROMOTION OF ESCR

We can conclude that procedures such as the new ECOSOC resolution recognise and legitimise the current role of NGOs to provide information and to represent particular interests in the

international forum. Moreover, at recent international conferences on issues closely related to ESCR, such as the Conference on Social Development or on Women, the potential role of NGOs in the monitoring of ESCR was officially recognised. However, experience with this role is still at an initial stage.

Additionally, there are several problems, apart from procedures, that NGOs have to deal with in order to further develop their monitoring role. These include the lack of expertise on the macro-level, the definition of their role with respect to other actors, and their legitimacy derived from an adequate support by civil society. Moreover, it is urgent to introduce and promote ESCR as an essential concept in the discussion of national, regional and global problems.

Within this context, we have seen the potential of permanent procedures, established by several international organisations and committees, which provide a monitoring space for NGOs. It is important for NGOs to lobby for additional procedures and participation channels within institutions such as the World Bank and the WTO. Further advancement in this direction is likely to have a positive impact on the effectiveness of NGOs in the monitoring of ESCR. Effectiveness, however, will depend on whether these procedures are sufficiently well known and whether their potential is used by international and national NGOs for the promotion of Economic, Cultural and Social Rights.

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⁹ For more information on the UN-NGO relationship see Wolfrum, Rüdiger, Philip Christiane (editors): «UN: Law, Policies and Practice», Volume 2, Chapter on NGOs. Verlag C.H. Beck, München

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Additional Information

- Experience and information gained through the author's collaboration with the Committee on Economic, Social and Cultural Rights from January 1996 onwards.
- Information provided by the Secretary of the Committee on Economic, Social and Cultural Rights, Mr. Alexandre Tikhonov, UN, Geneva during 1997.
- Interview with Mr. Adolfo Castillo, Technical Secretary of the Plataforma Sudamericana de Derechos Humanos, Democracia y Desarrollo, Santiago, Chile, 12 December 1997.